TEXAS REGISTER

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Veronica Taillon
7th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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WITHDRAWN RULES

ADOPTED RULES

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
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To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for June 10, 2003

Appointed to the Texas Transportation Commission for a term to expire February 1, 2009, Robert Lee Nichols of Jacksonville.

Appointed to the Texas Humanities Council for a term to expire December 31, 2004, Cynthia J. Comparin of Dallas (replacing Maria Cardenas of Brownsville whose term expired).

Appointed to the Texas Humanities Council for a term to expire December 31, 2004, Maceo Crenshaw Dailey, Jr., Ph.D. of El Paso (Dr. Dailey is being reappointed).

Rick Perry, Governor

TRD-200303548

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0061-GA

Requestor:

The Honorable James L. Keffer

Chair, Committee on Economic Development

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether Long Island, a spoil island directly south of the City of Port Isabel, is an island bordering on the Gulf of Mexico (Request No. 0061-GA)

Briefs requested by July 17, 2003

RQ-0062-GA

Requestor:

The Honorable Jose R. Rodriguez

El Paso County Attorney

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Whether a school district that does not participate in the state uniform group coverage program is required to provide health coverage to persons who have retired under the Teacher Retirement System but have returned to work (Request No. 0062-GA)

Briefs requested by July 17, 2003

For further information, please access the website at www.oag.state.tx.us. *or call the Opinion Committee at 512/463-2110.*

TRD-200303746
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: June 18, 2003

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Crime Stoppers Advisory Council ("Council") proposes the amendment of Subchapter H §3.9000.

The Council proposes the addition of Subchapter H §§3.9005, 3.9010, and 3.9015.

The Council proposes the repeal of Subchapter H §3.9100 and §3.9200.

The proposed amendments and additions provide processes and procedures for the certification, decertification, and review of crime stoppers organizations, and the requirements for the submission of annual probation fee and repayment reports.

The proposed amendment to §3.9000 clarifies the requirements that a crime stoppers organization must fulfill to be certified by the Council to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure. The authority to determine if a crime stoppers organization is qualified to receive such repayments and payments is granted to the Council by Texas Government Code, §414.011(a). The proposed amendment also clarifies the processes and procedures for certification, and permits the Council to extend the certification period for limited periods of time under specified circumstances.

The proposed addition of §3.9005 establishes processes and procedures for deciding if a crime stoppers organization should be decertified during the certification period. The authority to determine if a crime stoppers organization should be decertified because the organization no longer meets the certification requirements is granted to the Council by Texas Government Code, §414.011(d).

The proposed addition of §3.9010 requires a certified crime stoppers organization to submit an annual probation fee and repayment report postmarked no later than January 31 of each year. The proposed addition implements the requirements set forth in Texas Government Code, §414.010(a).

The proposed addition of §3.9015 establishes processes and procedures for the review of certified crime stoppers organizations. The authority to direct the review of certified crime stoppers organizations is granted to the Criminal Justice Division ("CJD") of the Office of the Governor by Texas Government Code, §414.011(b).

The proposed repeal of §3.9100, entitled "Certification", and §3.9200, entitled "Decertification", allows these section numbers to be available if further expansion of the administrative code becomes necessary. The provisions regarding certification are found in §3.9000 and the provisions regarding decertification are found in §3.9005.

Dan Glotzer, Manager of Budget and Finance for CJD, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Glotzer has also determined that for the first five-year period that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient processes and procedures and the current rules will be more easily understood. There will be no anticipated economic cost to persons or businesses for complying with the proposed rules.

Comments on the proposed amendments may be submitted to Heather Morgan, Office of the Governor, Criminal Justice Division, at hmorgan@governor.state.tx.us; P. O. Box 12428, Austin, Texas 78711; or (512) 463-1919. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER H. CRIME STOPPERS PROGRAM CERTIFICATION

DIVISION 1. CRIME STOPPERS PROGRAM CERTIFICATION

1 TAC §§3.9000, 3.9005, 3.9010, 3.9015

The amendment of §3.9000, and the addition of §3.9005 and §3.9010, are proposed under the Texas Government Code, Title 4, §414.006, which provides the Council the authority to adopt rules to carry out its functions.

The amendment of §3.9000 implements the Texas Government Code, Title 4, §414.011(a), which requires the Council to certify qualified crime stoppers organizations to receive payments and reward repayments. The addition of §3.9005 implements the Texas Government Code, Title 4, §414.011(d), which authorizes the Council to decertify a crime stoppers organization if it determines that the organization no longer meets the certification requirements. The addition of §3.9010 implements the Texas Government Code, Title 4, §414.010(a), which requires certified crime stoppers organizations to file a detailed report with the Council not later than January 31 of each year.

The addition of §3.9015 is proposed under the Texas Government Code, Title 4, §414.011(c), which authorizes CJD or its designee to draft rules for adoption by the Council relating to the review or audit of certified crime stoppers organizations.

The addition of §3.9015 implements the Texas Government Code, Title 4, §414.011(b), which subjects certified crime

stoppers organizations to review or audit of their finances or programs at the direction of CJD or its designee.

No other statutes, articles, or codes are affected by the amendment and addition of these rules.

§3.9000. Certification[~~Requirements~~].

(a) The Crime Stoppers Advisory Council shall, on application by a crime stoppers organization as defined by §414.001(2) of the Texas Government Code, determine whether the organization meets the requirements to be certified to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(b) The Crime Stoppers Advisory Council shall, in its discretion, certify a crime stoppers organization to receive those repayments or payments if, considering the organization, continuity, leadership, community support, and general conduct of the organization, the Council determines that the repayments or payments will be spent to further the crime prevention purposes of the organization.

(c) Certification is valid for two years from the date of issuance. If a crime stoppers organization's certification expires, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure, until the organization obtains certification. The two-year certification period may be extended under the following circumstances:

(1) If an organization's application to renew its certification is received by the director of the Crime Stoppers Advisory Council before the two-year certification period expires, the organization's certification shall continue in effect until the Council makes a decision regarding the renewal of its certification.

(2) The chairman of the Crime Stoppers Advisory Council may extend the two-year certification period for a period of time not to exceed 90 days if:

(A) one of the following extenuating circumstances occurs before the two-year certification period expires:

(i) natural or man-made disaster;

(ii) serious illness, incapacity, or death of the chairman, treasurer, or secretary of the organization's board of directors;

(iii) serious illness, incapacity, or death of one of the organization's law enforcement/civilian coordinators; or

(iv) death of a member of the immediate family of one of the officials listed in clauses (ii) and (iii) of this subparagraph;

(B) one of the extenuating circumstances listed in subparagraph (A) of this paragraph has a detrimental effect on the organization's ability to submit an application for certification before the two-year certification period expires; and

(C) the director of the Crime Stoppers Advisory Council receives the organization's written request to extend the certification period no later than 20 calendar days after one of the extenuating circumstances listed in subparagraph (A) of this paragraph occurs.

(d) [~~(a)~~] A[~~In order to obtain certification, a~~] private, nonprofit[~~non-profit~~] crime stoppers organization must submit the following information to the director of the Crime Stoppers Advisory Council in order to obtain certification:

(1) Documentation from the Internal Revenue Service granting the[~~be a non-profit~~] organization tax exempt status;

(2) Proof that the following persons completed a training course provided by CJD and the Crime Stoppers Advisory Council, or their designee, within the year prior to submission of its application for certification:[~~be granted tax exempt status by the IRS~~]

(A) one member of the organization's board of directors, and

(B) one of the organization's law enforcement/civilian coordinators;

(3) A completed and signed Conditions of Certification Form;[~~have at least one member of the organization's Board of Directors, as well as the Police/Civilian Coordinator of the Crime Stoppers organization attend a complete training conference provided by the Criminal Justice Division of the Governor's office and the Texas Crime Stoppers Advisory Council, or its designee, in the year prior to certification~~]

(4) The names, addresses and telephone numbers of the members of the organization's board of directors, and the position held by each member[~~complete and sign the conditions of certification form~~];

(5) The names, addresses and telephone numbers of the organization's law enforcement/civilian coordinators; and

(6) If the organization is currently certified by the Crime Stoppers Advisory Council or the organization's most recent certification expired within three years prior to submission of its application for certification, the organization must submit the following additional information:

(A) financial statements covering the two-year certification period on a form prescribed by the Crime Stoppers Advisory Council;

(B) documentation from the relevant community supervision and corrections departments stating the amount of probation fees disbursed to the organization during the two-year certification period; and

(C) any Annual Probation Fee and Repayment Reports that have not been submitted to the director of the Crime Stoppers Advisory Council.

(e) [~~(b)~~] A[~~In order to obtain certification, a~~] public crime stoppers organization must submit the following information to the director of the Crime Stoppers Advisory Council in order to obtain certification:[~~have at least one employee attend a complete training conference provided by the Office of the Governor or its designee in the year prior to certification.~~]

(1) Proof that one of the organization's law enforcement/civilian coordinators completed a training course provided by CJD and the Crime Stoppers Advisory Council, or their designee, within the year prior to submission of its application for certification;

(2) A completed and signed Conditions of Certification Form;

(3) The names, addresses and telephone numbers of the members of the organization's governing board, and the position held by each member;

(4) The names, addresses and telephone numbers of the organization's law enforcement/civilian coordinators; and

(5) If the organization is currently certified by the Crime Stoppers Advisory Council or the organization's most recent certification expired within three years prior to submission of its application

for certification, the organization must submit the following additional information:

(A) financial statements covering the two-year certification period on a form prescribed by the Crime Stoppers Advisory Council;

(B) documentation from the relevant community supervision and corrections departments stating the amount of probation fees disbursed to the organization during the two-year certification period; and

(C) any Annual Probation Fee and Repayment Reports that have not been submitted to the director of the Crime Stoppers Advisory Council.

(f) Decisions regarding the certification of crime stoppers organizations shall be made by the Crime Stoppers Advisory Council.

§3.9005. Decertification.

(a) During the two-year certification period, the Crime Stoppers Advisory Council shall, in its discretion, decertify a crime stoppers organization if it determines that the organization no longer meets the certification requirements described in §3.9000(b), which may include a violation of state or federal law.

(b) If a crime stoppers organization is decertified by the Crime Stoppers Advisory Council, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(c) The Crime Stoppers Advisory Council shall send written notification to the crime stoppers organization no later than 45 calendar days prior to the meeting at which the Council will consider the decertification of the organization. The written notification shall include the following:

(1) Any noncompliance with the certification requirements described in §3.9000(b); and

(2) The date, time, and location of the meeting at which the Council will consider the decertification of the organization.

(d) The crime stoppers organization shall submit a written response, which shall include an explanation and specific reasons why the organization believes that it should not be decertified. The written response must be received by the director of the Crime Stoppers Advisory Council at least 10 calendar days prior to the meeting at which the Council will consider the decertification of the organization.

(e) The Crime Stoppers Advisory Council shall render a decision regarding the decertification of the crime stoppers organization and shall notify the organization in writing of its decision.

(f) If a crime stoppers organization is decertified, the director of the Crime Stoppers Advisory Council shall notify the state comptroller, and the relevant county auditors and community supervision and corrections departments in the organization's region, that the organization is decertified and is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(g) Not later than the 60th day after the date of decertification of the organization, the decertified organization shall forward all unexpended money received under this section to the state comptroller.

§3.9010. Annual Probation Fee and Repayment Report.

A crime stoppers organization that is certified by the Crime Stoppers Advisory Council shall submit to the director of the Crime Stoppers Advisory Council an Annual Probation Fee and Repayment Report postmarked no later than January 31 of each year.

§3.9015. Review.

By accepting certification, a crime stoppers organization agrees to the following conditions of review:

(1) CJD will review the activities of a crime stoppers organization that is certified by the Crime Stoppers Advisory Council as necessary to ensure that the organization's finances and programs further the crime prevention purposes of the organization in compliance with the laws and rules governing crime stoppers organizations.

(2) CJD may perform a desk review or an on-site review at the organization's location. In addition, CJD may request that the organization submit relevant information to CJD to support any review.

(3) After a review, the organization shall be notified in writing of any noncompliance identified by CJD in the form of a preliminary report.

(4) The organization shall respond to the preliminary report within a time frame specified by CJD.

(5) The organization's response shall become part of the final report, which shall be submitted to the organization and the director of the Crime Stoppers Advisory Council.

(6) Any noncompliance, including an organization's failure to provide adequate documentation upon request, may serve as grounds for decertification of the organization by the Crime Stoppers Advisory Council.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303568
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 463-1919

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1 TAC §3.9100, §3.9200

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of these rules is proposed under the Texas Government Code, Title 4, §414.006, which provides the Council the authority to adopt rules to carry out its functions.

The repeal of §3.9100 implements the Texas Government Code, Title 4, §414.011(a), which requires the Council to certify qualified crime stoppers organizations to receive payments and reward repayments. The repeal of §3.9200 implements the Texas Government Code, Title 4, §414.011(d), which authorizes the Council to decertify a crime stoppers organization if it determines that the organization no longer meets the certification requirements.

No other statutes, articles, or codes are affected by the repeal of these rules.

§3.9100. Certification.

§3.9200. Decertification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303569
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 463-1919

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PART 9. STATE AIRCRAFT POOLING BOARD

CHAPTER 181. GENERAL PROVISIONS

1 TAC §181.15

The State Aircraft Pooling Board proposes new §181.15, concerning a 12-hour notice provision in order to accommodate priority scheduling for statewide elected officials.

The new rule will place into effect the provisions of Texas Government Code, Title 10, Chapter 2205, §2205.038(d), providing for such advance notice, in light of reduced availability of aircraft to serve the needs of state officials and employees traveling on state business.

Jerry Daniels, Executive Director, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Daniels has also determined that for the first five years the rule is in effect, the public will benefit through state officials having greater accessibility to and efficiency in traveling to all areas of the state on state business. There is no economic cost to persons who are required to comply with the rule as proposed and no negative effect on small businesses.

Comments on the proposals may be submitted within thirty days of this publication to Jerry Daniels, State Aircraft Pooling Board, 10335 Golf Course Road, Austin, Texas 78719, (512) 936-8900.

The new rule is proposed under Texas Government Code, Title 10, Chapter 2205, §2205.010, which provides the board the authority to adopt rules for conducting business.

There are no other statutes, articles, or codes that will be affected by the new rule.

§181.15. Priority Scheduling.

In accordance with Texas Government Code, Title 10, Chapter 2205, §2205.038(d), statewide elected officials, upon giving 12-hour advance notice to the scheduling office, shall be given priority in the scheduling of aircraft.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2003.

TRD-200303544
Jerry Daniels
Executive Director
State Aircraft Pooling Board
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 936-8900

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 2. MEDICAID VISION CARE PROGRAM

1 TAC §§354.1015, 354.1021, 354.1023

The Health and Human Services Commission (HHSC) proposes to amend Chapter 354. Chapter 354 describes the benefits and provider requirements of the Texas medical assistance (Medicaid) program. The amendments to §354.1015, Benefits and Limitations, limit the provision of prosthetic and non-prosthetic eyewear through Vision Care Services to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program under 25 T.A.C. Chapter 33. The limitation of prosthetic and non-prosthetic eyewear through Vision Care Services is necessary because of a lack of available appropriated funds to continue the service for Medicaid clients who are not EPSDT recipients. The proposed amendment will bring the rules into compliance with H.B. 2292, 78th Leg., R.S. (2003) and the General Appropriations Act, 78th Leg., R.S. (2003). The amendments to §354.1021, Additional Claims Information Requirements, and §354.1023, Optometrist Services, are administrative and update references within the rules.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years the proposed amendments are in effect there will be savings to the state as follows: $2,156,874 (GR) in State Fiscal Year 2004; the fiscal savings for each fiscal year for 2005 through 2008 is $2,155,790 (GR). The proposed amendments will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the amendments as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the amendments. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no anticipated negative impact on local employment.

Billy Millwee, Deputy Director, Medicaid/CHIP Program Operations, has determined that for each year of the first five years the amendments are in effect, the public will benefit from adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendments, will be to continue to provide medically necessary eyewear through Vision Care Services to EPSDT recipients within the level of appropriated funds.

HHSC has determined that the proposed amendments are not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Written comments on the proposal may be submitted to Marianna Zolondek, Appeals Manager, Texas Health and Human Services Commission, 1100 W. 49th Street, MC- H500, Austin, Texas 78756-3199, within 30 days of publication of this proposal in the *Texas Register*. A public hearing is scheduled for Tuesday, July 15, 2003, 8:00 a.m. to 12:00 noon. The hearing will be held at the Board of Health Room, 7th Floor, Texas Department of Health, 1100 W. 49th, Austin, Texas 78756. To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

The proposed rules affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed rules.

§354.1015. Benefits and Limitations.

Except as specified in §354.1023 [~~§29.105~~] of this title (relating to Optometrist Services), the services addressed in this subchapter are those optometric services available to Medicaid recipients who are 21 years old or older. Services are available to Medicaid recipients under 21 years old through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program , Benefits and Limitations, described in 1 T.A.C. §363.502. The amount, duration, and scope of optometric services available through the Texas Medical Assistance Program are established according to applicable federal regulations, the Texas state plan for medical assistance under Title XIX of the Social Security Act, state law, and department rules. Information regarding benefits and limitations is available to providers of these services through the Texas Medicaid Provider Procedures Manual which is issued to each provider on enrolling in the Medicaid Program. The benefits and limitations applicable to optometric services available through the Medicaid Program to Medicaid recipients who are 21 years old or older are as follows.

(1) Provider eligibility. All services reimbursable by the program must be provided to eligible recipients by a physician, optometrist, or optician enrolled in the Medicaid program at the time the service(s) is provided.

(2) Reimbursable services.

[~~(A)~~] Examination. One examination of the eyes by refraction may be provided to each eligible recipient every 24 months.

[~~(B) Prosthetic (aphakic) eyewear. Prosthetic eyewear, including contact lenses and glass or plastic lenses in frames, is a program benefit provided to an eligible recipient if the eyewear is prescribed for postcataract surgery, congenital absence of the eye lens, or loss of an eye lens because of trauma.~~]

[~~(i)~~ ~~Reimbursement is made for as many temporary lenses as are medically necessary during postsurgical cataract convalescence (the four-month period following the date of cataract surgery).~~]

[~~(ii)~~ ~~Only one pair of permanent prosthetic lenses can be dispensed as a program benefit. Reimbursement is made by the program for the replacement of lost or destroyed prosthetic eyewear and the replacement of prosthetic eyewear if required because of a change in visual acuity of .5 diopters or more.~~]

[~~(C) Nonprosthetic (nonaphakic) eyewear. Nonprosthetic eyewear that is medically necessary to correct defects in vision is a program benefit provided to an eligible recipient only once every 24 months, unless his eyes have undergone a change in visual acuity of .5 diopters or more. Nonprosthetic eyewear includes contact lenses and glass or plastic lenses in frames.~~]

[~~(i)~~ ~~Prescriptions for contact lenses must have written prior authorization by the department or its designee. Prior authorization is based on the provider's written documentation that these lenses are the only means of correcting the vision defect.~~]

[~~(ii)~~ ~~Replacement of nonprosthetic eyewear because of a change in visual acuity begins a new 24-month period governing eligibility for new eyewear.~~]

[~~(D) Repairs. Repairs to prosthetic eyewear are reimbursable if the cost of materials exceeds $2.00. Repairs costing less are not reimbursable by the program and the provider many not bill the recipient for these services. Repairs to nonprosthetic eyewear are not reimbursable by the program.~~]

[~~(E) Replacement of lost or destroyed nonprosthetic eyewear. Replacement of lost or destroyed nonprosthetic eyewear is not reimbursable by the program.~~]

[~~(F) Optometric services provided in skilled or intermediate care facilities. These services are reimbursable by the program if the recipient's attending physician has ordered the service(s) and the order is included in the recipient's medical record in the nursing facility.~~]

§354.1021. Additional Claims Information Requirements.

Providers must meet the claim criteria established in the provisions of this subchapter for optometric services and the provisions for participation in the Medicaid program established under Subchapter A of this chapter (relating to Medicaid Procedures for Providers) and Subchapter L of this chapter (relating to General Administration) of the purchased health services chapter. Besides the claims information requirements established in §354.1001 [~~§29.1~~] of this title (relating to Claim Information Requirements), the following information is required for claims for services:

[~~(1)~~] name, address, and Medicaid provider identification number of the ordering provider, as appropriate. [~~;~~]

[~~(2) description of lenses and frames provided;~~]

[~~(3) provider's signature on the claim form verifying the diopter change required for the dispensing of replacement eyewear;~~]

[(4) certification by the provider that the dispensed eyewear materials used for repairs to prosthetic eyewear meet the specifications for eyewear in §29. 102 of this title (relating to Specifications for Eyewear);]

[(5) claims for eyewear with special features must be signed by the recipient, acknowledging his selection of eyewear that is beyond the specifications for eyewear in §29.102 of this title (relating to Specifications for Eyewear). A signed patient certification satisfies this requirement for claims that are electronically submitted;]

[(6) a copy of this invoice for supplies dispensed must be attached to a claim for repairs;]

[(7) reimbursement for replacement prosthetic eyewear is contingent upon the original eyewear being lost or damaged beyond repair or upon the recipient's visual acuity having changed significantly as defined in §29.101 (2)(B)(ii) of this title (relating to Benefits and Limitations). If the original eyewear has been lost or damaged beyond repair, the recipient must sign the claim form or, in the case of providers who electronically bill, a patient certification. Reimbursement for replacement nonprosthetic eyewear is contingent upon the recipient's visual acuity having undergone a significant change as defined in §29.101(2)(C) of this title (relating to Benefits and Limitations);]

[(8) the provider must show the name of the physician who ordered optometric services on a claim showing a skilled nursing facility or an intermediate care facility as the place of service.]

§354.1023. Optometrist Services.

(a) In addition to those services described in §354.1015 [§29.101] and §363.502 [§33.402] of this title (both relating to Benefits and Limitations) and subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission (Commission) [Texas Department of Health (department)] or its designee, diagnostic and treatment services provided by an optometrist are covered by the Texas Medical Assistance Program.

(b) To be covered, the evaluation services shall be:

(1) within the optometrist's scope of practice, as defined by state law;

(2) reasonable and medically necessary as determined by the [department] Commission or its designee; and

(3) provided to an eligible recipient by an optometrist enrolled in the Texas Medical Assistance Program at the time the service(s) is provided.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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DIVISION 4. MEDICAID CHIROPRACTIC SERVICES

1 TAC §354.1051, §354.1052

The Health and Human Services Commission (HHSC) proposes to amend Chapter 354, Medicaid Health Services. Chapter 354 describes the benefits and provider requirements of the Texas medical assistance (Medicaid) program. The amendments to §354.1051, Additional Claim Information Requirements, are administrative and update references within the rule. The amendment to §354.1052, Authorized Chiropractic Services, limits the provision of chiropractor services provided by a doctor of chiropractic to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program under 25 T.A.C. Chapter 33. The limitation of chiropractor services is necessary because of a lack of available appropriated funds to continue the service for Medicaid clients who are not EPSDT eligible. The proposed amendments will bring the rules into compliance with H.B. 2292, 78th Leg., R.S. (2003) and the General Appropriations Act, 78th Leg., R.S. (2003).

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years the proposed amendments are in effect there will be savings to the state as follows: $323,574 (GR) in State Fiscal Year 2004; the fiscal savings for each fiscal year for 2005 through 2008 is $323,411 (GR). The proposed amendments will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the amendments as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no anticipated negative impact on local employment.

Mr. Billy Millwee, Deputy Director, Program Operations, Medicaid/CHIP, has determined that for each year of the first five years the amendments are in effect, the public will benefit from adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendments, will be to continue to provide medically necessary chiropractor services to EPSDT recipients within the level of appropriated funds.

HHSC has determined that the proposed amendments are not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Written comments on the proposal may be submitted to Marianna Zolondek, Appeals Manager, Texas Health and Human Services Commission, 1100 W. 49th Street, MC H500, Austin, Texas 78756-3199, within 30 days of publication of this proposal

in the *Texas Register*. A public hearing is scheduled for Tuesday, July 15, 2003, 8:00 a.m. to 12:00 noon. The hearing will be held at the Board of Health Room, 7th Floor, Texas Department of Health, 1100 W. 49th, Austin, Texas 78756. To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

The amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposal.

§354.1051. Additional Claim Information Requirements.

In addition to the general requirements in §354.1001 [~~§29.1~~] of this title (relating to Claim Information Requirements), the following information is required on chiropractic claims:

(1) The diagnosis of subluxation which specifies the level and condition (acute or chronic).

(2) Location of subluxation. The precise level of the subluxation must be specified to substantiate a claim for manipulation of the spine. This designation is made in relation to the part of the spine in which the subluxation is identified. The level of subluxation may be specified in the following ways:

(A) The exact bones may be listed.

(B) The location may be used if it implies several bones.

(3) Place of service.

(4) The type of each treatment procedure.

(5) The individual charge for each authorized service related to a major diagnosis.

(6) Number of manual manipulations that have been performed.

§354.1052. Authorized Chiropractic Services.

(a) Chiropractic services include those services provided by a doctor of chiropractic and which are within the scope of practice of his profession as defined by state law. Benefits are limited to services which consist of necessary treatment or correction by means of manual manipulation of the spine, by use of hands only, to correct a subluxation to the same extent that such benefits are provided under Part B of Medicare. Benefits are available under this section only for services which are provided during the first 12 visits to any one eligible recipient by a doctor of chiropractic during any one benefit period. Benefit period for purposes of this section means a 12 consecutive month period which begins with the month of the first treatment.

(b) Coverage does not extend to the diagnostic, therapeutic services, or adjunctive therapies furnished by a chiropractor or by others under his or her orders or direction. This exclusion applies to the x-ray taken for the purpose of determining the existence of a subluxation of the spine. Additionally, braces or supports, even though ordered by an MD or DO and supplied by a chiropractor, are not reimbursable items.

(c) Chiropractor services are limited to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment program under 25 T.A.C. Chapter 33.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
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DIVISION 8. PODIATRY SERVICES

1 TAC §354.1101, §354.1102

The Health and Human Services Commission (HHSC) proposes to amend Chapter 354, Medicaid Health Services. Chapter 354 describes the benefits and provider requirements of the Texas medical assistance (Medicaid) program. The amendments to §354.1101, Additional Claim Information Requirements, are administrative and update references within the rule. The amendments to §354.1102, Authorized Podiatry Services, limit the provision of podiatry services to recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program under 25 T.A.C. Chapter 33. The limitation of podiatry services is necessary because of a lack of available appropriated funds to continue the service for Medicaid clients who are not EPSDT recipients. The proposed amendment will bring the rules into compliance with H.B. 2292, 78th Leg., R.S. (2003) and the General Appropriations Act, 78th Leg., R.S. (2003).

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years the proposed amendments are in effect there will be savings to the state as follows: $1,631,800 (GR) in State Fiscal Year 2004; the fiscal savings for each fiscal year for 2005 through 2008 is $1,630,980 (GR). The proposed amendments will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the amendments as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the amendments. There is no anticipated negative impact on local employment

Billy Millwee, Deputy Director, Program Operations, Medicaid/CHIP, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendments, will be to continue to provide medically necessary podiatry services to EPSDT recipients within the level of appropriated funds.

HHSC has determined that the proposed amendments are not a "major environmental rule," as defined by §2001.0225 of the

Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043 of the Government Code.

Written comments on the proposal may be submitted to Marianna Zolondek, Appeals Manager, Texas Health and Human Services Commission, 1100 W. 49th, MC H500, Austin, Texas 78756-3199, within 30 days of publication of this proposal in the *Texas Register*. A public hearing is scheduled for Tuesday, July 15, 2003, 8:00 a.m. to 12:00 noon. The hearing will be held at the Board of Health Room, 7th Floor, Texas Department of Health, 1100 W. 49th, Austin, Texas 78756. To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed rules affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposal.

§354.1101. Additional Claim Information Requirements.

In addition to the general requirements in §354.1001 [~~§29.1~~] of this title (relating to Claim Information Requirements), the following information is required on claims for podiatry services:

(1) place of service;

(2) the type of each diagnostic, treatment, or surgical procedure;

(3) the number of miles for which a travel charge is made;

(4) the individual charge for each service related to the major diagnosis;

(5) diagnosis(es) to a maximum of two primary and three secondary diagnoses of the condition(s) for which treatment and services were provided. With respect to diagnostic or other services furnished at the request of a physician or another podiatrist, this requirement may be waived by the health insuring agent if the podiatrist providing the services shows that such information is not available to him;

(6) name, address, and appropriate identification number of the ordering physician or podiatrist if services were provided by a nonordering podiatrist; and

(7) all supplemental information, including clarification of the diagnoses in terms of the degree or extent of involvement, necessary to substantiate the need for the services provided or changes made, or both.

§354.1102. Authorized Podiatry Services.

(a) The term "podiatry services" includes those services provided by or under the personal supervision of a doctor of podiatry which are within the scope of practice of his profession as defined by state law and for which benefits are or would have been provided under Medicare had the recipient been eligible for Medicare.

(b) Reimbursement for Podiatry services are limited to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment program under 25 TAC Chapter 33.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
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DIVISION 15. HEARING AID SERVICES

1 TAC §354.1231, §354.1233, §354.1235

The Health and Human Services Commission (HHSC) proposes to amend Chapter 354. Chapter 354 describes the benefits and provider requirements of the Texas medical assistance (Medicaid) program. The amendments to §354.1231, Benefits and Limitations, §354.1233, Requirements for Hearing Aid Services, and §354.1235, Requirements for Provider Participation, limit the provision of hearing aid services available for persons age 21 years and over. The limitation of hearing aid services for Medicaid recipients 21 years and older is necessary because of a lack of available appropriated funds to continue the service without additional limitations. Hearing aid services continue to be available to Medicaid recipients under the age of 21 through the Texas Department of Health, pursuant to 25 T.A.C. Chapter 37. The proposed amendments implement appropriation initiatives directed by the General Appropriations Act, 78th Leg., R.S. (2003). Additional amendments are administrative and update references within the rules.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years the proposed amendments are in effect there will be savings to the state as follows: $ 477,600 GR) in State Fiscal Year 2004; the fiscal savings for each fiscal year for 2005 through 2008 is $477,360 (GR). The proposed amendments will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the proposed amendments. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the amendments. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no anticipated negative impact on local governments.

Mr. Billy Millwee, Deputy Director, Program Operations, Medicaid/CHIP, has determined that for each year of the first five years the proposed amendments are in effect, the public will benefit from there adoption. The anticipated public benefit, as a result of enforcing the amendments, will be to continue to provide medically necessary hearing aid services to EPSDT recipients through the Texas Department of Health, as stated above.

HHSC has determined that the proposed amendments are not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that these proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043of the Government Code.

Written comments on the proposal may be submitted to Marianna Zolondek, Appeals Manager, Texas Health and Human Services Commission, 1100 W. 49th Street, MC H500, Austin, Texas 78756-3199, within 30 days of publication of this proposal in the *Texas Register*. A public hearing is scheduled for Tuesday, July 15, 2003, 8:00 a.m. to 12:00 noon. The hearing will be held in the Board of Health Room, Texas Department of Health, Health and Human Services Commission, 1100 W. 49th, Austin, Texas 78756. To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed new rules.

§354.1231. Benefits and Limitations.

(a) Benefits. Reimbursement for hearing aid services available through the Texas Medical Assistance (Medicaid) Program shall be provided in accordance with federal regulations found at 42 CFR Subchapter C, Medical Assistance Programs; state-legislated appropriations; and the provisions and procedures found elsewhere in this chapter as cited at §354.1233 [~~§29.1502~~] of this title (relating to Requirements for Hearing Aid Services). The following hearing aid services shall be reimbursed, through the Texas Medicaid Program:

(1) physician examination to determine the medical necessity for a hearing aid;

(2) hearing aid evaluations, including home visit hearing evaluations;

[~~(3) hearing aid;~~]

[~~(4) initial fitting, dispensing, and post-fitting check of hearing aid; and~~]

[~~(5) first and second revisits to assess the recipient's adaptation to the hearing aid and the functioning of the instrument.~~]

(b) Limitations and exclusions. Hearing aid providers and examining physicians must comply with the following conditions and limitations established by the department or its designee.

(1) Hearing aid services shall be available only to non-EPSDT eligible Medicaid recipients.

[~~(2) Recipients shall be limited to one hearing aid every six years (72 months) from the dispensing month of the present instrument.~~]

(2) [~~(3)~~] An individual using a hearing aid before becoming eligible for Medicaid benefits may have a hearing evaluation conducted by an approved hearing aid services provider after becoming eligible for Medicaid. [~~Medicaid payment for a new hearing aid, however, shall be denied if the provider concludes, based upon the evaluation findings, that the recipient's present hearing aid adequately compensates for the degree of hearing loss.~~]

(3) [~~(4)~~] Providers may not submit a hearing evaluation claim to the [~~department~~] Commission or its designee unless the Medicaid recipient meets the eligibility criteria in §354.1233 [~~§29.1502(b)~~] of this title (relating to Requirements for Hearing Aid Services).

(4) [~~(5)~~] The Commission [~~department~~] or its designee shall not pay for the replacement of batteries or cords.

[~~(6) Binaural fittings shall not be available except for legally blind, hearing-impaired recipients who can document that they have no other available resources.~~]

[~~(7) Providers should dispense United States manufactured hearing aids if the purchase price and quality are comparable to those of foreign manufacturers.~~]

(5) [~~(8)~~] Recipients may receive home visit hearing evaluations [~~and hearing aid fittings only~~] on the written recommendation of a physician.

[~~(9) Hearing aid services do not include auditory training, speech reading, or other types of habilitative or rehabilitative services.~~]

[~~(10) Medicaid reimbursement for hearing aids shall be limited to eligible recipients whose air conduction puretone average in the better ear is 45dB or greater.~~]

§354.1233. Requirements for Hearing Aid Services.

(a) Hearing aid services. Providers of hearing aid services must comply with all applicable federal and state laws and regulations, recognized professional standards, and the provisions cited in Subchapter A of this chapter (relating to Medicaid Procedures for Providers), and Subchapter L of this chapter (relating to General Administration), in addition to the conditions, specifications, limitations established by the Texas Department of Health (department) or its designee, and applicable requirements of their licensing authority.

(1) Physicians. Physicians shall be reimbursed for all services covered by the Texas Program: examinations and [~~,~~] hearing evaluations [~~, and fitting and dispensing services~~].

(2) Audiologists. Audiologists shall be reimbursed for hearing evaluations [~~and fitting and dispensing services~~].

[(3) Fitters and dispensers. Fitters and dispensers shall be reimbursed for fitting and dispensing services.]

(b) Hearing evaluations. Hearing evaluations must be recommended by a physician based upon examination of the recipient. Reimbursement for hearing evaluations will be made only to physicians or licensed audiologists. [The recipient must have a medical necessity for a hearing aid as stated in §29.1501(b)(10) of this title (relating to Benefits and Limitations) and have no medical contraindications to the recipient's ability to use and/or wear a hearing aid.]

(1) A physician who recommends a hearing evaluation must be licensed to practice medicine in the state where and when the evaluation is conducted.

(2) The physician must indicate on the Physician Examination Report form if the recipient needs a hearing evaluation based on the examination of the recipient. Medicaid reimbursement for a hearing evaluation shall be based on the physician's recommendation that the hearing evaluation is medically necessary.

(3) Providers must administer hearing evaluations using appropriate procedures as specified within their scope of practice and recognized professional standards.

(4) Reimbursement for home visit hearing evaluations shall be made if the recipient's physician has documented that the recipient's medical condition prohibits traveling to the provider's place of business.

(5) Providers of hearing evaluations must have a report in the recipient's record. Providers must include in the report hearing evaluation test data [and a recommendation for the hearing aid most appropriate for the ear being amplified. If any of the criteria cited in this section cannot be met, providers must specify in the evaluation report the factors influencing or preventing assessments, and justify the recommendation for a hearing aid.]

(6) Hearing evaluations performed by fitters and dispensers are not reimbursable. If a fitter or dispenser performs a hearing evaluation on a recipient the recipient shall not be billed for the hearing evaluation.

[(c) Hearing aids. Providers must offer each recipient eligible for a hearing aid a new instrument that meets the recipient's hearing need and that is within the allowable fee paid by the Texas Medicaid Program.]

[(1) Hearing aids above the maximum allowable fee. The department shall pay the maximum allowable fee paid by the Texas Medicaid Program toward hearing aids for recipients who meet the requirements cited at §29.1504(b)(2) of this title (relating to Reimbursement for Hearing Aid Services).]

[(2) Warranty. Providers must ensure that each hearing aid purchased through the Texas Medicaid Program is a new and current model which meets the performance specification of the manufacturer and the hearing needs of the recipient. Providers must also ensure that each hearing aid is covered by a standard 12-month manufacturer's warranty, effective from the dispensing date.]

[(3) Required package. Providers must dispense each hearing aid purchased through the Texas Medicaid Program with all necessary tubing, cords, and connectors; instructions for care and use; and a one-month supply of batteries.]

[(4) Thirty-day trial period. Providers must allow each eligible recipient 30 days to determine if the recipient is satisfied with a hearing aid purchased through the Texas Medicaid Program. The trial period consists of 30 consecutive days from the dispensing date. Providers must inform recipients of the trial period and of the beginning and ending dates.]

[(A) During the trial period, providers may dispense additional hearing aids, as medically necessary, until the recipient is satisfied with the results of the aid or the provider determines that the recipient cannot benefit from the dispensing of an additional hearing aid. A new trial period begins with the dispensing date of each hearing aid.]

[(B) Providers may charge a rental fee for hearing aids returned during the trial period.]

[(i) If a rental fee is charged, providers must assess the rental fee according to the rules and regulations established by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments and the State Board of Examiners for Speech-Language Pathology and Audiology.]

[(ii) If there is no signed agreement between the recipient and the provider specifying a greater amount, the maximum rental for eligible Medicaid recipients shall be $2 per day. This fee shall not be a covered benefit of the Texas Medicaid Program. Recipients shall be responsible for paying any rental fee assessed them for instruments returned during the 30-day period. Providers must keep in the recipient's file the signed certification acknowledging responsibility to pay hearing aid rental fees.]

[(iii) Providers must comply with all procedures and directions provided by the department or its designee regarding forms and certifications required during the 30-day trial period. Providers must allow 30 days to elapse from the hearing aid dispensing date before completing a "30-day trial period certification statement," which is kept in the recipient's file.]

[(5) Postfitting checks. The fitter and dispenser must perform a postfitting check of the hearing aid within five weeks of the initial fitting. The postfitting check is part of the dispensing procedure.]

[(6) First revisit. The first revisit shall include a hearing aid check and/or counseling and is conducted as needed within six months of the postfitting check.]

[(7) Second revisit. The second revisit shall be conducted as needed. The purpose of the second revisit is to make any necessary adjustments to the hearing aid or to continue counseling.]

§354.1235. Requirements for Provider Participation.

(a) Provider enrollment. Each physician [,] or audiologist [, or fitter and dispenser of hearing aids] claiming reimbursement for hearing aid services provided as a Title XIX benefit to an eligible Medicaid recipient must be enrolled in the Texas Medicaid Program.

(1) To be eligible for reimbursement of Title XIX benefits for hearing aid services covered by the Texas Medicaid Program, each provider of Medical care and services must enter into a written agreement with the department.

(2) Participating providers must comply with all federal and state laws and regulations governing the Texas Medicaid Program. Providers must also comply with the provisions, conditions, certifications, and limitations as described in this subchapter.

(b) Provider licensure and certification. To be eligible for participation as a provider of hearing aid services under the Texas Medicaid Program, physicians [,] and audiologists, [and fitters and dispensers] must meet applicable federal and state licensing and/or certification laws and rules for the services they provide. The following requirements shall be applicable to Medicaid providers of hearing aid services practicing in the State of Texas:

(1) Physicians (MD or DO) must be currently licensed to practice medicine by the State Board of Medical Examiners.

(2) Audiologists must be currently licensed by the State Board of Examiners for Speech-Language Pathology and Audiology and be certified by the American Speech-Language-Hearing Association (ASHA) or meet ASHA equivalency requirements. [~~Audiologists providing fitting and dispensing services must be registered with the State Board of Examiners for Speech-Language Pathology and Audiology.~~]

~~[(3) Fitters and dispensers must be currently licensed by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
General Counsel
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DIVISION 19. PSYCHOLOGISTS' SERVICES

1 TAC §354.1281, §354.1282

The Health and Human Services Commission (HHSC) proposes to amend Chapter 354, Medicaid Health Services. Chapter 354 describes the benefits and provider requirements of the Texas medical assistance (Medicaid) program. The amendment to §354.1281, Benefits and Limitations, limits the provision of psychologists' services to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program under 25 T.A.C. Chapter 33. The amendment is necessary because of a lack of available appropriated funds to continue psychologists' services for Medicaid clients who are not EPSDT eligible. The amendment to §354.1282, Conditions of Participation, includes an exception for providers who meet the criteria specified in §354.1173(b) to the requirement that Medicaid providers are also enrolled in Medicare. The proposed amendments also replace references to the Texas Department of Health with references to HHSC. The proposed amendments will bring the rules into compliance with H.B. 2292, 78th Leg., R.S. (2003) and the General Appropriations Act, 78th Leg., R.S. (2003).

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years the proposed amendments are in effect there will be savings to the state as follows: $1,850,700 (GR) in State Fiscal Year 2004; the fiscal savings for each fiscal year for 2005 through 2008 is $1,849,770 (GR). The proposed amendments will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with these amendments as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no anticipated negative impact on local employment.

Mr. Billy Millwee, Deputy Director, Program Operations, Medicaid/CHIP, has determined that for each year of the first five years the amendments are in effect, the public will benefit from adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendments, will be to continue to provide medically necessary psychologists' services to EPSDT recipients within the limits of appropriated funds.

HHSC has determined that the proposed amendments are not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043 of the Government Code.

Written comments on the proposal may be submitted to Marianna Zolondek, Appeals Manager, Texas Health and Human Services Commission, 1100 W. 49th Street, MC H500, Austin, Texas 78756-3199, within 30 days of publication of this proposal in the *Texas Register*. A public hearing is scheduled for Tuesday, July 15, 2003, 8:00 a.m. to 12:00 noon. The hearing will be held in the Board of Health Room, Texas Department of Health, 1100 W. 49th, Austin, Texas 78756.

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the Texas Medicaid program; and Government Code §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

The amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed amendments.

§354.1281. Benefits and Limitations.

(a) Subject to the specifications, conditions, requirements, and limitations established by the [~~Texas Department of Health (department)~~] Texas Health and Human Services Commission (HHSC) or its designee, psychological counseling and services provided by a licensed psychologist are covered if the services:

(1) are within the psychologist's scope of practice, as defined by state law; and

(2) would be covered by the Texas Medical Assistance Program when they are provided by a licensed physician (MD or DO).

(b) To be payable, the services must be reasonable and psychologically necessary as determined by the department or its designee.

(c) The Texas Medical Assistance Program does not reimburse for the services of a psychological assistant working under the direction of a licensed psychologist.

(d) Licensed psychologists who are employed by or remunerated by a physician, hospital, facility, or other provider may not bill the Texas Medical Assistance Program directly for psychologists' services if that billing would result in duplicate payment for the same services. If the services are covered and reimbursable by the program, payment may be made to the physician, hospital, or other provider (if approved for participation in the Texas Medical Assistance Program) who employs or reimburses the licensed psychologist. The basis and amount of Medicaid reimbursement depends on the services actually provided, who provided the services, and the reimbursement methodology utilized by the Texas Medical Assistance Program as appropriate for the services and provider(s) involved.

(e) Licensed psychologist services are limited to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment program under 25 T.A.C. Chapter 33.

§354.1282. Conditions of Participation.

Subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission (Commission) [~~Texas Department of Health (department)~~] or its designee, a psychologist must:

(1) be licensed by the Texas State Board of Examiners of Psychologists or other appropriate state licensing authority;

(2) comply with all applicable federal and state laws and regulations governing the services provided;

(3) be enrolled and participating in Medicare , unless the provider satisfies the criteria for exception described in §354.1173 (b);

(4) be enrolled and approved for participation in the Texas Medical Assistance Program;

(5) sign a written provider agreement with the Commission [~~department~~] or its designee;

(6) comply with the terms of the provider agreement and all requirements of the Texas Medical Assistance Program, including regulations, rules, handbooks, standards, and guidelines published by the Commission [~~department~~] or its designee; and

(7) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by the Commission [~~department~~] or its designee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
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DIVISION 29. LICENSED PROFESSIONAL COUNSELORS AND ADVANCED CLINICAL PRACTITIONERS

1 TAC §354.1381, §354.1382

The Health and Human Services Commission (HHSC) proposes to amend Chapter 354, Medicaid Health Services. Chapter 354 describes the benefits and provider requirements of the Texas medical assistance (Medicaid) program. The amendment to §354.1381, Benefits and Limitations, limits the provision of counseling services provided by licensed marriage and family therapists (LMFT), licensed professional counselors (LPC), and licensed master social worker-advanced clinical practitioners (LMSW-ACP) to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program under 25 T.A.C. Chapter 33. The amendment is necessary because of a lack of available appropriated funds to continue counseling services for Medicaid clients who are not EPSDT eligible. The amendment to §354.1382, Conditions for Participation, includes an exception for providers who meet the criteria specified in §354.1173(b) to the requirement that Medicaid providers are also enrolled in Medicare. The proposed amendments also replace references to the Texas Department of Health with references to HHSC. The proposed amendments will bring the rules into compliance with H.B. 2292, 78th Leg., R.S. (2003) and the General Appropriations Act, 78th Leg., R.S. (2003).

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years the proposed amendments are in effect there will be savings to the state as follows: $15,283,200 (GR) in State Fiscal Year 2004; the fiscal savings for each fiscal year for 2005 through 2008 is $15,275,520 (GR). The proposed amendments will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with these amendments as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposal. There is no anticipated negative impact on local employment.

Mr. Billy Millwee, Deputy Director, Program Operations, Medicaid/CHIP, has determined that for each year of the first five years the proposal is in effect, the public will benefit from adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendments, will be to continue to provide medically necessary counseling services to EPSDT recipients within the levels of appropriated funds.

HHSC has determined that the proposed amendments are not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendments are not specifically

intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043 of the Government Code.

Written comments on the proposal may be submitted to Marianna Zolondek, Appeals Manager, Texas Health and Human Services Commission, 1100 W. 49th Street, MC H500, Austin, Texas 78756-3199, within 30 days of publication of this proposal in the *Texas Register*. A public hearing is scheduled for Tuesday, July 15, 2003, 8:00 a.m. to 12:00 noon. The hearing will be held in the Board of Health Room, 7th Floor, Texas Department of Health, 1100 W. 49th, Austin, Texas 78756.

The amendments are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

The amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed new rules.

§354.1381. Benefits and Limitations.

(a) Counseling for emotional disorders or conditions provided by licensed professional counselors (LPCs), licensed master social worker-advanced clinical practitioners (LMSW-ACPs), and licensed marriage and family therapists (LMFTs) as allowed by each respective licensing law are covered services.

(b) To be considered payable, the services must be reasonable and medically necessary as determined by the department or its designee.

(c) LPCs, LMSW-ACPs or LMFTs who are employed by or remunerated by another provider may not bill the Texas Medical Assistance Program directly for counseling services if that billing would result in duplicate payment for the same services.

(d) Services provided by an LPC, LMSW-ACP, and LMFT are limited to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment program under 25 T.A.C. Chapter 33.

§354.1382. Conditions for Participation.

(a) To participate in the Texas Medical Assistance Program, licensed professional counselors (LPCs) must be licensed by the Texas Board of Examiners of Professional Counselors in accordance with the Texas Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

(b) To participate in the Texas Medical Assistance Program, licensed master social worker-advanced clinical practitioners (LMSW-ACPs) must be licensed as a master social worker and be recognized as being qualified for the practice of clinical social work by the Texas State Board of Social Worker Examiners in accordance with the Human Resources Code, Subtitle E, Chapter 50.

(c) To participate in the Texas Medical Assistance Program, licensed marriage and family therapists (LMFTs) must be licensed by the Texas Board of Examiners of Marriage and Family Therapists in accordance with the Licensed Marriage and Family Therapist Act, Texas Civil Statutes, Article 4512c-1.

(d) These providers must:

(1) meet the appropriate licensing requirements as required in subsections (a), (b) or (c) of this section;

(2) comply with all applicable federal and state laws and regulations governing the services provided;

(3) be enrolled and participating in Medicare (this applies to LMSW-ACPs only), unless the provider satisfies criteria for exemption described in 354.1173(b);

(4) be enrolled and approved for participation in the Texas Medical Assistance Program;

(5) sign a written provider agreement with the Commission [~~department~~] or its designee;

(6) comply with the terms of the provider agreement and all requirements of the Texas Medical Assistance Program, including regulations, rules, handbooks, standards, and guidelines published by the Commission [~~department~~] or its designee; and

(7) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by the Commission [~~department~~] or its designee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 355, Medicaid Reimbursement Rate. Chapter 355 describes the reimbursement methodology of the Texas medical assistance (Medicaid) program. HHSC proposes to amend §355.112, to limit the enrollment of new contracted providers wanting to participate in the Attendant Compensation Rate Enhancement, pending available funds. This amendment restricts the participation opportunity of new contracted providers if legislation or budgetary constraints limit the number of enhancement levels and/or enhanced amounts awarded to providers currently participating in the rate enhancement. By limiting the participation opportunity of new contracts, this amendment will allow current participating providers to continue to receive their awarded enhancement levels without being subjected to an open enrollment and the possibility of reduced enhancement levels or enhanced amounts. If funding

becomes available, new contracted providers will have the opportunity to participate in the rate enhancement during the subsequent open enrollment period.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Steve Lorenzen, Director of Rate Analysis, has determined that during the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be to allow HHSC greater flexibility in ensuring appropriate payments are made to eligible providers.

There is no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Alisa Jacquet (telephone: 512-685-3129; FAX: 512-685-3104) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Ms. Jacquet via facsimile or mail to HHSC Rate Analysis, Mail Code H-400, 1100 West 49th Street, Austin, TX 78756-3101, within 30 days of publication in the *Texas Register*. For further information regarding the proposal or to make the proposal available for public review, contact local offices of DHS or Alisa Jacquet at (512) 685-3129 in HHSC Rate Analysis.

A public hearing is scheduled for Wednesday, July 16, 2003, from 2:00 pm until 5:00 pm. The hearing will be held in room 1410 at the Brown-Heatly Building, 4900 N. Lamar Blvd., Austin, Texas 78751.

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties; §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

The amendment implements the Government Code, §§531.033 and 531.021(b).

§355.112. Attendant Compensation Rate Enhancement.

(a)-(f) (No change.)

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DHS client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized signator as per the DHS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days of the date of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. The granting of newly requested rate enhancement increments as outlined in subsection (p) of this section is limited to available funds. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (m) until:

(1)-(3) (No change.)

(h)-(o) (No change.)

(p) Granting additional attendant compensation rate enhancement increments. HHSC divides all requests for attendant compensation rate enhancement increments into two groups: pre-existing rate enhancement increments which providers requested to carry over from the prior year and newly requested rate enhancement increments. Newly requested rate enhancement increments may be requested by providers who were nonparticipants in the prior year, [~~or~~] by providers who were participants during the prior year desiring to be granted additional rate enhancement increments or by new contracts as described in subsection (g) of this section. Using the process described herein, HHSC first determines the distribution of carry-over rate enhancement increments. If funds are available after the distribution of carry-over rate enhancement increments, HHSC determines the distribution of newly requested rate enhancement increments as follows:

(1)-(2) (No change.)

(q)-(dd) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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SUBCHAPTER B. ESTABLISHMENT AND ADJUSTMENT OF REIMBURSEMENT RATES BY THE HEALTH AND HUMAN SERVICES COMMISSION

1 TAC §355.201

The Texas Health and Human Services Commission ("commission") proposes to amend Chapter 355, Medicaid Reimbursement Rates. Chapter 355 describes the reimbursement methodology of the Texas medical assistance (Medicaid) program. The commission proposes new Subchapter B and new Section 355.201, relating to the establishment and adjustment of Medicaid provider reimbursement rates.

Background and Summary of Factual Basis for the Rules. Section 531.021(b), Government Code, directs the commission to adopt reasonable rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code. Subsections (d)

and (e) of Section 531.021, effective September 1, 2003, authorizes the commission to provide for the payment of such rates, fees, and charges for medical assistance in accordance with rules adopted by the commission, state or federal law, economic factors that affect provider participation, or in accordance with levels of appropriated funds. The proposed rule is intended to implement procedures to enable the commission to comply with the duties and authority granted under Section 531.021, subsections (d) and (e).

Section-by-Section Explanation. Subsection (a) of the proposed rule defines certain terms used in the rule. Subsection (b) describes the purpose of the rule. Subsection (c) establishes the commission's responsibility to set fees, rates, and charges in accordance with other requirements of this chapter, state and federal laws, economic considerations that affect entire groups of providers, and available levels of appropriated funds.

Subsection (d) of the proposed rule authorizes the commission to adjust such rates, fees, and charges in order to comply with changes in the state or federal law (including the enactment of new laws, the amendment of current laws, or the judicial interpretation of existing law) under four circumstances. First, the commission may adjust rates, fees, or charges if the change in law specifically requires the commission to increase or reduce a rate, fee, or charge. Second, the rule authorizes the commission to adjust rates, fees, or charges if the change in law affects the scope of allowable or unallowable costs for providers. Third, the commission may adjust rates, fees, or charges if a change in the law requires all providers within a program or category of providers to incur additional costs to provide medical assistance (other than unallowable costs) that are not currently recognized in the reimbursement methodology established by the commission for the program. Fourth, the commission may adjust rates, fees, or charges if the state general appropriations act limits the availability, amount, or use of funds appropriated to pay for medical assistance.

Subsection (d) also permits the commission to adjust rates in consideration of economic factors or conditions that may have a significant and measurable effect on provider participation under specified circumstances. First, the economic factor or condition must prevail among all providers within a specific Medicaid program (such as the Early and Periodic Screening, Diagnosis, and Treatment program) or within a specific category of providers (such as physicians, hospitals, etc.). Second, the commission must determine whether the economic factor or condition results or may result in a demonstrable increase in the cost of providing services beyond amounts recognized in the commission's established reimbursement methodology. Alternatively, the economic factor or condition must require providers to incur costs, other than unallowable costs, that are not recognized in the commission's reimbursement methodology.

Subsection (e) requires the commission to publish notice of a proposed adjustment to rates, fees, or charges initiated under the proposed rule at least 10 calendar days before the proposed adjustment may take effect. If the adjustment is based on a change in state or federal law, the notice may (but is not necessarily required to) be published before the effective date of the change. However, the subsection also provides that the proposed adjustment will not take effect before the effective date of the change in law. Subsection (f) prescribes the content of the notice that must be published under subsection (e).

Public Benefit. Billy Millwee, Deputy Director, Program Operations, has determined that during the first five years that the proposed rule is in effect, the public will benefit from the greater flexibility afforded the commission and health and human services in reimbursing services provided to Medicaid recipients. Under the proposed rule, the commission may adjust provider reimbursement to respond to changes in the economy that have a demonstrable impact on providers, or to comply with limitations or restrictions on the expenditure of funds enacted by the state legislature. The commission may also adjust rates, fees, and charges in response to economic factors or conditions that may have a significant and measurable effect on provider participation or providers' ability to deliver services in accordance with state and federal law. The proposed rule also establishes a procedure for publication of advance notice of a proposed adjustment of rates, fees, or charges.

Fiscal Note. Thomas Suehs, Chief Financial Officer, has determined that for the first five years that the proposed rule is in effect, no additional costs will be required of providers or the public to comply with the rule. Because the proposed rule does not implement specific changes to reimbursement rates, fees, or charges, no additional costs will be borne by local governments as a result of the proposed rule, nor is there any anticipated impact on revenues of state or local government.

Small and Micro-business Impact Analysis. The proposed rule will not result in additional costs to persons required to comply with the proposed rule, nor does the proposed rule have any anticipated adverse effect on small or micro-businesses. The proposed rule will not affect local employment.

Regulatory Analysis. The commission has determined that the proposed rule is not a "major environmental rule" as defined by §2001.0225, Government Code. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure.

Takings Impact Assessment. The Health and Human Services Commission has determined that the proposed rule does not restrict or limit an owner's right to property that would otherwise exist in the absence of governmental action and therefore this action does not constitute a taking under Texas Government Code, §2007.043. The proposed rule is administrative in nature and does not impose any new regulatory requirements. The proposed rule is reasonably taken to fulfill requirements of state law.

Public Hearing. The commission will hold a public hearing regarding this rule and other proposed rules on July 16, 2003, from 2:00 pm. to 5:00 p.m., in the Public Hearing Room of the Brown-Heatly State Office Building, 4900 North Lamar Boulevard, Austin, Texas. Persons who require interpreter services for the deaf or hard of hearing or other special assistance should contact Nancy Kimble, HHSC Rate Analysis (Telephone: 512-338-6496; FAX: 512-338-6544; or E-mail: nancy.kimble@hhsc.state.tx.us).

Public Comment. Public comment may be submitted in writing to Ms. Kimble, HHSC Rate Analysis, Mail Code H-410, by U.S. mail to 1100 West 49th Street, Austin, Texas 78756-3101, by overnight, special delivery or hand delivery to Riata Building III, 12555 Riata Vista Circle, Austin, Texas 78727-6404, or by facsimile to 512-338-6544. Written comments must be submitted by 5:00 p.m., July 28, 2003. Further information may be obtained by calling Ms. Kimble at 512-338-6496.

In addition to statutory authority cited in the Background and Summary of Factual Basis for the Rules above, the rule is also

proposed pursuant to Government Code, §2001.006, which allows state agencies to adopt rule in preparation for the implementation of legislation.

No other statutes, articles or codes are affected by the proposed rule.

§355.201. Establishment and adjustment of reimbursement rates by the Health and Human Services Commission.

(a) Definitions. Unless the context clearly indicates otherwise, the following words and terms when used in this section are defined as follows:

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

(2) "Medical assistance" means a medical or health care related service, item, or supply that is delivered to a Medicaid recipient and is approved and authorized for payment or reimbursement by the commission or a health and human services agency pursuant to state and federal law.

(3) "Program" means a specific component of the Medicaid program for which the commission establishes either a methodology to reimburse a provider or a specific fee, payment rate, or charge that is paid to a provider for medical assistance in accordance with state and federal law.

(4) "Provider" means a health care practitioner, institution, or other entity that is enrolled in the medical assistance program and is authorized to submit claims for payment or reimbursement of medical assistance.

(b) Purpose. This section implements the provisions of Section 531.021, subsections (d) and (e), Government Code and applies to all programs that provide medical assistance and to all reimbursement methodologies prescribed under this chapter.

(c) Establishment of fees, rates, and charges. The commission establishes fees, rates, and charges to be paid for medical assistance in accordance with:

(1) the formulas, procedures, or methodologies prescribed in this chapter;

(2) the requirements of state and federal law, including:

(A) legislative or Congressional enactments that change state or federal laws in a manner that affects such fees, rates, and charges;

(B) changes in federal regulations, and policies that affect such fees, rates, and charges; and

(C) judicial orders, opinions, or interpretations regarding state or federal law that affect such fees, rates, and charges;

(3) the consideration of economic factors that, in the commission's determination:

(A) have or may have a significant and measurable effect on provider participation; or

(B) have or may have a significant and measurable effect on providers' ability to deliver services in accordance with state and federal law; and

(4) levels of appropriated state and federal funds or state or federal laws or enactments that limit, restrict, or condition the availability of appropriated funds for medical assistance.

(d) Adjustment of fees, rates, and charges. Notwithstanding any other provision of this chapter, the commission may adjust fees, rates, and charges paid for medical assistance if:

(1) state or federal law is enacted, amended, or judicially interpreted to:

(A) require the commission to increase or reduce a fee, rate, or charge paid to a provider for medical assistance;

(B) change the amount, scope, or type of allowable or unallowable costs for providers of medical assistance that are required to report costs to the commission or a health and human services agency for purposes of establishing a reimbursement rate for medical assistance;

(C) require all providers within a program or category of providers to incur additional costs to provide medical assistance, other than unallowable costs, that are not currently recognized in the reimbursement methodology established by the commission for the program; or

(D) restrict, limit, or condition the availability of appropriated funds to the commission for payment or reimbursement of medical assistance;

(2) economic conditions that prevail among all providers within a specific program or category of providers and:

(A) result in a demonstrable increase in the cost of providing services beyond amounts recognized in the commission's established reimbursement methodology; or

(B) require providers within a program or category of providers to incur costs, other than unallowable costs, that are not currently recognized in the reimbursement methodology established by the commission for the program.

(e) Notice of adjustment of fees, rates, and charges. If the commission adjusts fees, rates, or charges under this section, the commission or its designee will publish notice of the proposed adjustment at the earliest feasible date but not later than 10 calendar days before the effective date of the adjustment. If the adjustment is required by the enactment or amendment of state or federal law, such notice may be published before the effective date of such enactment or amendment, but the adjustment to fees, rates, or charges will not take effect before the effective date of the enactment or amendment. The notice may be published either by publication on the commission's Internet web site, the Texas Register, written communication to providers, or a combination of these methods.

(f) Contents of notice. The notice required under subsection (e) of this section will include the following:

(1) a description of the specific increase or reduction of fees, rates, and charges;

(2) the date on which such adjustment will take effect and the period during which the adjustment will be in effect;

(3) a description of the legal and factual bases for the adjustment;

(4) a description of the specific requirements of the rate setting methodology established under this chapter that cannot effectively be implemented as a result of the adjustment; and

(5) instructions for interested parties to submit written comments to the commission regarding the proposed adjustment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.307, §355.308

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 355, Medicaid Reimbursement Rate. Chapter 355 describes the reimbursement methodology of the Texas medical assistance (Medicaid) program. HHSC proposes to amend §355.307, concerning reimbursement setting methodology, and §355.308, concerning enhanced direct care staff rate in its Medicaid Reimbursement Rates chapter. The purpose of the amendments is to bring the program into compliance with H.B. 1 and H.B. 2292 of the 78th legislative session, to clarify and/or simplify various aspects of the program and to correct erroneous references. H.B. 1 details appropriations for the nursing facility program for state fiscal years 2004 and 2005; Health and Human Services Commission Appropriations Rider 46 requires that reductions to any long term care budget strategy shall be calculated without rebasing of current reimbursement factors and shall be shared equally across all Medicaid providers funded by the strategy; H.B. 2292 requires that HHSC not impose a minimum spending requirement on facilities not participating in the direct care staff rate enhancement and that HHSC not set a base rate for a facility participating in the direct care staff rate enhancement that is more than the base rate for a nursing facility not participating in the program.

Modifications necessary to come into compliance with H.B. 1 and Rider 46 include: (1) setting the direct care staff, dietary, general/administration, fixed capital asset and other resident care rate components as well as the ventilator and pediatric tracheostomy add-ons and the pediatric care facility rate for state fiscal years 2004 and 2005 at the 2003 level adjusted as necessary to remain within appropriations; (2) indicating that any adjustments necessary to remain within appropriations will apply equally in percentage terms across each component of the nursing facility rate and each add-on; (3) indicating that staffing requirements for enhancement levels between the minimum staffing requirement for state fiscal years 2004 and 2005 and the minimum staffing requirement in effect for state fiscal year 2003 will be adjusted for variations in facility case mix; and (4) modifying the calculation of the ventilator add-on for participants in the enhancement program to include any enhancement levels subject to a case mix adjustment.

Major modifications necessary to come into compliance with H.B. 2292 include: (1) eliminating the minimum spending requirement for nonparticipants in the direct care staff rate enhancement; and (2) eliminating the base rate for participants. Other modifications necessary to come into compliance with H.B. 1 and Rider 46 and/or H.B. 2292 include: (1) indicating that facilities will be notified if funds are not available to maintain roll-over levels, participation levels or to fund pre-existing enhancements during an enrollment period; (2) changing how new facilities are handled to accommodate that fact that there will be one base rate for participants and nonparticipants instead of two base rates; (3) clarifying that if the granting of newly requested enhancements to ongoing providers is limited during enrollment that the granting of enhancements to new facilities is limited to that same level; (4) modifying reporting requirements to exclude nonparticipants in the enhancement; (5) deleting the 10 percent direct care recoupment for nonsubmittal of reports; (6) modifying the spending requirement for participants to insure that their final rate cannot be lower than the base rate. In addition, the provision allowing for performance-based mitigation of spending recoupments is deleted. This provision was enacted to provide relief to high quality nonparticipants subject to spending recoupment. Since nonparticipants are no longer subject to spending recoupment, the justification for this rule no longer exists.

Clarifications include: (1) changing the name of Section 355.308 from Enhanced Direct Care Staff Rate to Direct Care Staff Rate Component; (2) clarifying that open enrollment is for enhanced direct care staff rates; (3) clarifying the training requirements for Annual Staffing and Compensation Report preparers; (4) clarifying that calculations of minimum staffing requirements are based on residents in Medicaid-contracted beds only; (5) clarifying that the calculation of availability of funds to purchase additional staffing time is based upon direct care revenues and expenses; (6) clarifying that, for facilities adjusting their enhancement levels in the middle of the rate year, staffing requirements are weighted averages for the reporting period; (7) changing limited liability partnerships to limited partnerships in the provision that allows related facilities to have their compliance with the spending requirement determined in the aggregate for all related facilities since limited partnership has the meaning that is consistent with the description in the rule.

Simplifications and other revisions include amending the rules so that if a report is not received with a year of its due date, any recoupments due to nonsubmittal of the report are made permanent. As well, simplifications eliminate the opportunity for unachieved enhancements to qualify as pre-existing enhancements in terms of enrollment priority if the provider can prove a good faith effort to meet the requirements. This provision has never been accessed by a provider since the inception of the enhancement program. In addition the proposed rules delete interest charges for facilities missing their staffing requirements by four or more LVN equivalent minutes. The amount of money collected under this provision did not offset the administrative costs of enforcing the provision to the state and providers. In addition, the amount of interest collected was too small to be a disincentive to over-enrollment in the program. Proposed revisions also include changing the requirement upon HHSC to notify providers of their recoupment status within 90 days of the due date of the report to within 90 days of the determination of recoupment. The current requirement is impractical since recoupments are not determined until after the reports are audited and auditing does not occur within 90 days of the due date of the report. Another proposed revision eliminates the provision that allowed new owners to request to become participants or to increase their enhancement level within available funds. As all enhancement funds are awarded during the open enrollment, there would

never be funds available to activate this provision. Erroneous references to §355.306(a)(2)(B), a subparagraph that no longer exists, are proposed to be corrected to refer to §355.306(a)(2)(A). Erroneous references to 40 TAC §19.1812, a subsection that no longer exists, are proposed to be corrected to refer to §371.212. Erroneous references to DHS, which no longer has rate determination authority for nursing facilities, are proposed to be corrected to refer to HHSC. Finally, the proposed revisions add a requirement that a contract must be ongoing at the time reinvestment is determined to qualify for reinvestment. The purpose of this change is to ensure that reinvested funds are kept within the program rather than being distributed to entities no longer contracted to provide care to clients.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendments are in effect, there are fiscal implications for state government as a result of enforcing or administering the sections. There are no fiscal implications for local governments as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect is an estimated cost savings of $34,106,565 in fiscal year (FY) 2004; $29,355,571 in FY 2005; $34,896,440 in FY 2006; $30,127,260 in FY 2007; and $36,042,637 in FY 2008.

Steve Lorenzen, Director of Rate Analysis, has determined that during the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections is that the nursing facility rates and the direct care staff enhancement program will come into compliance with H.B. 1 and H.B. 2292 of the 78th legislative session. In addition, clarifications and simplifications will increase provider understanding of the program. Simplifications will also reduce the administrative costs of the program to the state and to providers. Finally, requiring that a contract be ongoing in order to qualify for reinvestment funds will insure that reinvestment of funds is limited to providers who are continuing to provide services to clients.

There is no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Pam McDonald (telephone: 512-685-3134; FAX: 512-685-3104) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Ms. McDonald via facsimile or mail to HHSC Rate Analysis, Mail Code H-400, 1100 West 49th Street, Austin, TX 78756-3101, within 30 days of publication in the *Texas Register*. For further information regarding the proposal or to make the proposal available for public review, contact local offices of DHS or Pam McDonald at (512) 685-3134 in HHSC Rate Analysis.

A public hearing on the proposed amendments is scheduled for Wednesday, July 16, 2003, from 2:00 pm until 5:00 pm. The hearing will be held in room 1410 at the Brown-Heatly Building, 4900 N. Lamar Blvd., Austin, Texas 78751.

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, HHSC is not required to complete a takings impact assessment regarding these rules.

The amendments are proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties; §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation

The amendments implement the Government Code, §§531.033 and 531.021(b).

§355.307. Reimbursement Setting Methodology.

(a) Case mix classes. The Texas Health and [~~Department of~~] Human Services Commission [~~(DHS)~~] (HHSC) reimbursement rates for nursing facilities (NFs) vary according to the assessed characteristics of recipient. Rates are determined for 11 case mix classes of service, plus a 12th, temporary classification assigned by default when assessment data are incomplete or in error.

(b) Reimbursement determination. HHSC [~~DHS~~] applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Rate Components. Under the case mix methodology, reimbursements are comprised of five cost-related components: the direct care staff component; the other recipient care component; the dietary component; the general/administration component; and the fixed capital asset component. The direct care staff component is calculated as specified in §355.308 of this title (relating to [~~Enhanced~~] Direct Care Staff Rate Component).

(A) The dietary rate component is constant across all case mix classes.

(i) For rates effective May 1, 2000, using the inflation factors used in determination of the nursing facility rates in effect January 1, 2000, project the costs in the 1998 Texas Nursing Facility Cost Report data base to the rate period beginning January 1, 2000, and ending August 31, 2000. Using these projected costs, determine the median per diem dietary cost (weighted by Medicaid days of service in the data base) in the array of allowable per diem costs for all contracted nursing facilities included in the January 1, 2000, data base, multiplied by 1.07.

(ii) For rates effective September 1, 2000, multiply the dietary per diem rate from clause (i) of this subparagraph by 1.016.

(iii) For rates effective September 1, 2001, and thereafter, the dietary component is calculated at the median cost (weighted by Medicaid days of service in the rate base) in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07.

(B) The general/administration rate component is constant across all case mix classes.

(i) For rates effective May 1, 2000, the general/administration rate component is equal to the difference between the general, administration, and dietary rate component in effect January 1, 2000, and the dietary rate component as calculated in paragraph (1)(A)(i) of this subsection.

(ii) For rates effective September 1, 2000, multiply the general/administration per diem rate from clause (i) of this subparagraph by 1.016.

(iii) For rates effective September 1, 2001, and thereafter, the general/administration component is calculated at the median cost (weighted by Medicaid days of service in the rate base)

in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07.

(C) The fixed capital asset component is constant across all case mix classes.

(i) For rates effective May 1, 2000, the fixed capital asset component is equal to the fixed capital asset component in effect January 1, 2000.

(ii) For rates effective September 1, 2000, the fixed capital asset component is equal to the fixed capital asset component from clause (i) of this subparagraph multiplied by 1.016.

(iii) For rates effective September 1, 2001 and thereafter, the fixed capital asset component is calculated as follows:

(I) Determine the 80th percentile in the array of allowable appraised property values per licensed bed, including land and improvements. Appraised values for this purpose are determined as follows:

(-a-) For proprietary facilities, tax exempt facilities provided an appraisal from their local property taxing authority, and tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status whose independent appraisal is in the first year of its five-year interval as described in §355.402(f)(2)(B)(ii) of this title (relating to Cost Report Requirements: 1997 and Subsequent Cost Reports), allowable appraised values are determined as described in §355.402(f) of this title (relating to Cost Report Requirements: 1997 and Subsequent Cost Reports).

(-b-) For tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status whose independent appraisal is not in the first year of its five-year interval as described in §355.402(f)(2)(B)(ii) of this title (relating to Cost Report Requirements: 1997 and Subsequent Cost Reports), allowable appraised values are determined by indexing the facility's allowable appraised value as determined in §355.402(f) of this title (relating to Cost Report Requirements: 1997 and Subsequent Cost Reports) to the median increase in appraised values among contracted facilities in the state as a whole from the reporting period coinciding with the first year of the facility's five-year interval to the reporting period upon which reimbursements are to be based.

(-c-) Those facilities that do not report an allowable appraised value as described in §355.402(f) of this title (relating to Cost Report Requirements: 1997 and Subsequent Cost Reports) are not included in the array for purposes of calculating the use fee.

(II) Project the 80th percentile of appraised property values per bed by one-half the forecasted increase in the personal consumption expenditures (PCE) chain-type price index from the cost reporting year to the rate year.

(III) Calculate an annual use fee per bed as the projected 80th percentile of appraised property values per bed times an annual use rate of 14%.

(IV) Calculate a per diem use fee per bed by dividing the annual use fee per bed by annual days of service per bed at the higher of 85% occupancy, or the statewide average occupancy rate during the cost reporting period.

(V) The use fee is limited to the lesser of the fee as calculated in subclauses (I)-(IV) of this clause, or the fee as calculated by inflating the fee from the previous rate period by the forecasted rate of change in the PCE chain-type price index.

(2) Case mix classification system. All Medicaid recipients are classified according to the Texas Index for Level of Effort (TILE) classification system described in 1 TAC §371.212 [~~40 TAC §19.1812~~] (relating to Case Mix Classification System). The TILE classification system includes four clinical categories, which are further subdivided on the basis of an activity of daily living (ADL) scale, resulting in a total of 11 TILE case mix groups. A 12th group is used by default when a recipient's case-mix group membership is indeterminate because of assessment errors or omissions. Each of the 12 case-mix groups, including the default group, is assigned a case-mix index of effort. This index indicates the relative amount of staff time required on average to deliver care to recipients in that group. The case-mix index for each of the 11 TILE groups is determined through statistical and clinical analyses of recipient resource utilization data previously collected in Texas NFs. The lowest index for the 11 TILE groups is used as the case-mix index for the default group.

(3) Per diem rate methodology. Staff determine per diem rate recommendations for each of the 11 TILE groups and for the default group according to the following procedures:

(A) Determine the statewide average case mix index for all Medicaid recipients, except those in the default group. Weight the indexes from paragraph (2) of this subsection, which are based on a sample of nursing facilities, by the estimated statewide recipient days of service by case mix group during the cost reporting period covered by the rate base and determine the weighted average. The statewide average index is based on the most recent and complete data available indicating recipient days of service by case mix group that correspond to the period covered by the cost reports included in the rate base.

(B) Determine the standardized statewide case mix index for each of the 11 TILE groups by dividing each of the indexes described under paragraph (2) of this subsection by the statewide average case mix index described under subparagraph (A) of this paragraph.

(C) The other recipient care rate component varies according to case mix class of service.

(i) For rates effective May 1, 2000, using the inflation factors used in determination of the nursing facility rates in effect January 1, 2000, project the costs in the 1998 Texas Nursing Facility Cost Report data base to the rate period beginning January 1, 2000, and ending August 31, 2000. Using these projected costs, determine the sum of other recipient care costs in all nursing facilities included in the 1998 data base. Then divide the total by the sum of recipient days of service in all facilities in the 1998 data base. Multiply the resulting weighted, average per diem cost of other recipient care by 1.07. The result is the average other recipient care rate component. To calculate the other recipient care per diem rate component for each of the 11 TILE case mix groups and for the default group, multiply each of the standardized statewide case mix indexes used in determination of the nursing facility rates in effect January 1, 2000, by the average other recipient care rate component.

(ii) For rates effective September 1, 2000, multiply the average other recipient care per diem rate from clause (i) of this subparagraph by 1.016. To calculate the other recipient care per diem rate component for each of the 11 TILE case mix groups and for the default group, multiply each of the standardized statewide case mix indexes used in determination of the nursing facility rates in effect January 1, 2000, by the average other recipient care rate component.

(iii) For rates effective September 1, 2001, and thereafter, the average other recipient care rate component is calculated as follows. Adjust the raw sum of other recipient care costs in all nursing facilities included in the rate base in order to account for disallowed costs and inflation, as specified in §355.306 of this title (relating to Cost Finding Methodology). Then divide the adjusted total by the sum of recipient days of service in all facilities in the current rate base. Multiply the resulting weighted, average per diem cost of

other recipient care by 1.07. The result is the average other recipient care rate component. To calculate the other recipient care per diem rate component for each of the 11 TILE case mix groups and for the default group, multiply each of the standardized statewide case mix indexes from subparagraph (B) of this paragraph by the average other recipient care rate component.

(D) Total case mix per diem rates vary according to case mix class of service and according to participant status in [~~the Enhanced~~] Direct Care Staff Rate enhancements described in §355.308 of this title (relating to [~~Enhanced~~] Direct Care Staff Rate Component).

(i) For each participating facility, for each of the 11 TILE case mix groups and for the default group, the recommended total per diem rate is the sum of the following five rate components:

(I) the dietary rate component from paragraph (1)(A) of this subsection;

(II) the general/administration rate component from paragraph (1)(B) of this subsection;

(III) the fixed capital asset use fee component from paragraph (1)(C) of this subsection;

(IV) the case mix group's other recipient care per diem rate component by case mix group from paragraph (3)(C) of this subsection; and

(V) the case mix group's total direct care staff rate component for that participating facility as determined in §355.308(1) of this title (relating to [~~Enhanced~~] Direct Care Staff Rate Component).

(ii) For nonparticipating facilities, for each of the 11 TILE case mix groups and for the default group, the recommended total per diem rate is the sum of the following five rate components:

(I) the dietary rate component from paragraph (1)(A) of this subsection;

(II) the general/administration rate component from paragraph (1)(B) of this subsection;

(III) the fixed capital asset use fee component from paragraph (1)(C) of this subsection;

(IV) the case mix group's other recipient care per diem rate component by case mix group from paragraph (3)(C) of this subsection; and

(V) the case mix group's total direct care staff base rate component [~~for non-participants~~] as determined in §355.308(k) of this title (relating to [~~Enhanced~~] Direct Care Staff Rate Component).

(E) Qualifying ventilator-dependent residents may receive a supplement to the per diem rate specified in subparagraph (D) of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must require artificial ventilation for at least six consecutive hours daily and the use must be prescribed by a licensed physician.

(ii) A ventilator-dependent resource differential case mix index is calculated, based on time-study research data. This resource differential index reflects the difference between direct nursing services for ventilator-dependent residents and services for residents in the most severe heavy-care TILE group.

(I) The per diem rate supplement for participants in the [~~Enhanced~~] Direct Care Staff Base Rate enhancements described in §355.308 of this title (relating to [~~Enhanced~~] Direct Care Staff Rate Component) is calculated by multiplying the resource differential case mix index times the per diem average other recipient care rate component, as described in paragraph (3)(C) of this subsection and by the average direct care staff base rate component [~~for participating facilities staffing at the minimum levels required for participation~~] as described in §355.308(k) [~~(1)~~] of this title (relating to [~~Enhanced~~] Direct Care Staff Rate) plus any enhancement levels subject to case mix adjustments and summing the products.

(II) The per diem rate supplement for non-participants in the [~~Enhanced~~] Direct Care Staff Base Rate enhancements described in §355.308 of this title (relating to [~~Enhanced~~] Direct Care Staff Base Rate) is calculated by multiplying the resource differential case mix index times the per diem average other recipient care rate component, as described in paragraph (3)(C) of this subsection and by the average direct care staff base rate component [~~for non-participating facilities~~] as described in §355.308(k) of this title (relating to [~~Enhanced~~] Direct Care Staff Base Rate) and summing the products.

(iii) The supplemental reimbursement for residents requiring continuous artificial ventilation is 100% of the per diem ventilator rate supplement.

(iv) The supplemental reimbursement for residents not requiring continuous artificial ventilation daily but requiring artificial ventilation for at least six consecutive hours daily is 40% of the per diem ventilator rate supplement.

(F) Qualifying children with tracheostomies requiring daily care may receive a supplement to the per diem rate specified in subparagraph (D) of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must be less than 22 years of age; require daily cleansing, dressing, and suctioning of a tracheostomy; and be unable to do self care. The daily care of the tracheostomy must be prescribed by a licensed physician.

(ii) The supplemental reimbursement for children receiving daily tracheostomy care is 60% of the per diem ventilator rate supplement as specified in subparagraph (E) of this paragraph.

(G) Children with qualifying conditions as specified in subparagraphs (E) and (F) of this paragraph may receive only one of the supplemental reimbursements. Therefore, children with tracheostomies who are also ventilator-dependent are not eligible to receive both supplemental reimbursements.

(4) Case mix classification effective periods. The effective periods of case mix classifications are defined as follows.

(A) A recipient's case mix classification and associated per diem rate payment remain in effect until the recipient's next required assessment, unless one of the following events takes place:

(i) a provider submits an off-cycle assessment as specified in 40 TAC §19.2412(a)(5) (relating to Texas Index for Level of Effort (TILE) Assessments);

(ii) a DHS nurse reviewer revises the recipient's assessment and TILE classification under the provisions of 40 TAC §19.2412(b) (Texas Index for Level of Effort (TILE) Assessments); or

(iii) the recipient is discharged from the Medicaid nursing facility vendor payment system for more than 30 days prior to receiving a permanent medical necessity determination.

(B) The case mix classification and associated per diem payment rate of a recipient in the default group are changed retroactively when the provider furnishes DHS with corrected data that permit classification in one of the 11 TILE case mix groups.

(c) Special reimbursement class. HHSC may define special reimbursement classes, including experimental reimbursement classes of service to be used in research and demonstration projects on new reimbursement methods and reimbursement classes of service, to address the cost differences of a select group of recipients. Special classes may be implemented on a statewide basis, may be limited to a specific region of the state, or may be limited to a selected group of providers.

(1) Pediatric Care Facility Class. The purpose of this special class is to recognize, through the adoption of a facility-specific payment rate, the cost differences that exist in a nursing facility or distinct unit of a nursing facility that serves predominantly children.

(2) Definitions.

(A) Pediatric care facility--A pediatric care facility is an entire facility that has maintained an average daily census of 80% or more children for the six-month period prior to its entry into the pediatric care facility class based on the entire licensed facility. A pediatric care facility can also be a distinct unit of a facility that has maintained an average daily census of 85% or more children for the six-month period prior to its entry into the pediatric care facility class based on the distinct unit of the facility. To remain a pediatric care facility, the pediatric care facility must maintain an average daily census of 80% or more children if the pediatric care facility is an entire facility and 85% or more children if the pediatric care facility is a distinct unit of the facility. The contracted provider must request in writing by certified mail or by special mail delivery where the delivery can be verified to become a member of the pediatric care facility special reimbursement class. The request must be sent to the Texas Health and Human Services Commission.

(B) Distinct unit--A portion of a nursing facility that is physically separate from (beds are not commingled with) other units of the facility. The distinct unit can be an entire wing, a separate building, an entire floor, or an entire hallway. The distinct unit consists of all beds within the designated area. A distinct unit must consist of 28 or more Medicaid-contracted beds.

(C) Children--For the purposes of this pediatric care facility class, children are defined as being at or below 22 years of age.

(3) Payment rate determination. Payment rates will be determined in the following manner:

(A) Cost reports and payment rate determination for pediatric care facilities are governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process). A nursing facility that contains a pediatric care facility distinct unit must complete two cost reports: one report for the pediatric care facility distinct unit and one report for the remainder of the facility.

(B) Payment rates for this class of service will be determined on a facility-specific basis for the pediatric care facility. The total allowable costs from the most recent cost report deemed acceptable are adjusted for inflation from the cost report period to the rate period. The adjusted cost is divided by the greater of total patient days of service reported on the cost report or the days of service at 85% of contracted capacity of the pediatric care facility. The resulting cost per day is multiplied by a factor of 1.03 to determine the final facility-specific rate. If no acceptable cost report is available, the provider will be required to submit a cost report covering the time period specified by HHSC.

(C) The facility-specific payment rate from paragraph (3)(B) of this subsection will be paid for all Medicaid residents of a qualifying pediatric care facility regardless of the TILE level of the resident.

(D) Residents of the pediatric care facility will not be eligible to receive the ventilator-dependent or the children-with-tracheostomies supplemental reimbursements.

(E) Pediatric care facilities are not eligible to participate in §355.308 (relating to Enhanced Direct Care Staff Rate).

(d) Nurse aide training and competency evaluation costs.

(1) DHS reimburses nursing facilities for the actual costs of training and testing nurse aides as required under the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). Payments are based on cost reimbursement vouchers that are to be submitted quarterly. Allowable costs are limited to those costs incurred for training provided after October 1, 1990, for:

(A) actual training course expenses up to a set amount determined by DHS per nurse aide;

(B) competency evaluation; or

(C) supplies and materials used in the nurse aide training not already covered by the training course fee.

(2) Nurse aide salaries while in training are factored into the vendor rate and are not to be included on the reimbursement voucher.

(3) Training program costs that exceed the DHS cost ceiling must have prior approval from DHS before costs can be reimbursed. A written request to Provider Billing Services must include:

(A) name and vendor number of facility.

(B) description of training program for which the facility is seeking reimbursement approval, to include:

(i) name, telephone number and address of the nurse aide training and competency evaluation program (NATCEP);

(ii) whether the NATCEP program is facility or non-facility-based; and

(iii) name of the NATCEP program director.

(C) an explanation of why the cost for the NATCEP exceeds the reimbursement ceiling. The explanation must include:

(i) a completed nurse aide unit cost calculation form for a facility-based NATCEP; or

(ii) a breakdown of the nurse aide unit cost by the instructor fees and training materials for a non-facility-based NATCEP.

(D) an explanation of why the nursing facility cannot utilize a training program at or below the reimbursement ceiling and what steps the facility has taken to explore more cost efficient training courses. The explanation must include:

(i) the availability of NATCEPs, such as the location or the frequency of training offered, in the geographic region of the facility;

(ii) the name and address of each NATCEP that the facility has explored as a provider of nurse aide training; and

(iii) the cost per nurse aide for each NATCEP identified in clause (i) of this subparagraph, as specified in subparagraph (C)(i) of this paragraph or subparagraph (C)(ii) of this paragraph.

(4) All prior approval requests as outlined in paragraph (3) of this subsection must be submitted to DHS, Provider Billing Services that:

(A) may request additional information in order to evaluate a reimbursement request; and

(B) will make the final decision on a reimbursement request.

(5) All nurse aide training courses must be approved by DHS before costs associated with them can be reimbursed.

(6) Nursing facilities are responsible for tracking and documenting nurse aide training costs for each nurse aide trained. All documentation is subject to DHS audits. If substantiating documentation for amounts billed to DHS cannot be verified, DHS will immediately recoup funds paid to the facility.

(7) Individuals who have successfully completed a nurse aide training and competency evaluation program (NATCEP) may be directly reimbursed for costs incurred in completing a NATCEP. The individual must meet all of the conditions specified in subparagraphs (A)-(E) of this paragraph.

(A) The individual must not have been employed at the time of completing the NATCEP.

(B) The individual must have been employed by, or received an offer of employment from, a nursing facility not later than 12 months after successfully completing the NATCEP.

(C) The individual must have been employed by the facility for no less than six months.

(D) The nursing facility must not have claimed reimbursement for training expenses for the individual.

(E) The individual must be listed on the current Nurse Aide Registry.

(8) Individuals must submit cost reimbursement vouchers to DHS with proof that the individual has been employed by a facility for no less than six months.

(9) Individuals who leave nursing facility employment before accruing the required six months of employment, as specified in paragraph (7)(C) of this subsection, may receive 50% reimbursement as long as the individual was employed for no less than three months.

(10) Reimbursement to individuals may not exceed the reimbursement ceiling as detailed in paragraph (1)(A) of this subsection.

(e) Oxygen costs. Oxygen costs incurred on or after January 1, 1995, will not be reimbursed on cost reimbursement vouchers. Those oxygen costs must be reported as expenses on the cost report.

(f) For rates effective September 1, 2003 and September 1, 2004, the rates for the dietary rate component from subsection (b)(1)(A) of this section, the general/administration rate component from subsection (b)(1)(B) of this section, fixed capital asset component from subsection (b)(1)(C) of this section, the other recipient care rate component from subsection (b)(3)(C) of this section, the supplement to per diem rates for qualified ventilator-dependent residents from subsection (b)(3)(E) of this section, the supplement to per diem rates for qualified children with tracheostomies from subsection (b)(3)(F) of this section and the pediatric care facility rate from subsection (c) of this section will be equal to the rates in effect August 31, 2003 adjusted as necessary to remain within appropriations. Adjustments necessary to remain within appropriations will apply equally in percentage terms across each component of the nursing facility rate and each add-on.

§355.308. [~~Enhanced~~] Direct Care Staff Rate Component.

(a) Direct care staff cost center. This cost center will include compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.

(1) Compensation to be included for these employee staff types is the allowable compensation defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) that is reported as either salaries and/or wages (including payroll taxes and workers' compensation) or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title (relating to Specifications for Allowable and Unallowable Costs) to be reported as costs applicable to specific cost report line items are not to be included in this cost center.

(2) Direct care staff who also have administrative duties not related to nursing must properly direct charge their compensation to each type of function performed based upon daily time sheets maintained throughout the entire reporting period.

(3) Nurse aides must meet the qualifications enumerated under 40 TAC §19.1903 (relating to Required Training of Nurse Aides) to be included in this cost center. Nurse aides include certified nurse aides and nurse aides in training as per 40 TAC §94.3(k) (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(4) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes (such as FICA, Medicare, and federal and state unemployment insurance) and who perform tasks routinely performed by employees. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title (relating to Specifications for Allowable and Unallowable Costs).

(5) For facilities receiving supplemental reimbursement for children with tracheostomies requiring daily care as described in §355.307(b)(3)(F) of this title (relating to Reimbursement Setting Methodology), staff required by 40 TAC §19.901(14)(C)(iii) (relating to Quality of Care) performing nursing-related duties for Medicaid contracted beds are included in the direct care staff cost center.

(6) For facilities receiving supplemental reimbursement for qualifying ventilator-dependent residents as described in §355.307(b)(3)(E) of this title (relating to Reimbursement Setting Methodology), Registered Respiratory Therapists and Certified Respiratory Therapy Technicians are included in the direct care staff cost center.

(7) Nursing facility administrators and assistant administrators are not included in the direct care staff cost center.

(8) Staff members performing more than one function in a facility without a differential in pay between functions are categorized at the highest level of licensure or certification they possess. If this highest level of licensure or certification is not that of an RN, LVN, medication aide, or certified nurse aide, the staff member is not to be included in the direct care staff cost center but rather in the cost center where staff members with that licensure or certification status are typically reported.

(b) Rate year. The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(c) Open enrollment. Open enrollment for the enhanced direct care staff rates will begin on the first day of July and end on the last day of that same July preceding the rate year for which payments are being determined unless the Texas Health and Human Services Commission (HHSC) notified providers prior to the first day of July that [~~that~~] open enrollment has been postponed or cancelled. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(d) Enrollment contract amendment. An initial enrollment contract amendment is required from each facility choosing to participate in the enhanced direct care staff rate. Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a participant can request to become a nonparticipant, a participant can request to change its enhancement level) during any open enrollment period. Requests to modify a facility's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (c) of this section. If the last day of the open enrollment period falls on a weekend, a national holiday, or a state holiday, then the first business day following the last day of the open enrollment period is the final day the receipt of the enrollment contract amendment will be accepted. An enrollment contract amendment that is not received by the stated deadline will not be accepted. Facilities from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds. If HHSC determines that funds are not available to continue participation at the level of participation in effect during the open enrollment period, facilities will be notified as per subsection (ee) of this section. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized signator as per the Texas Department of Human Services (DHS) Form 2031 applicable to the provider's contract or ownership type, and be legible.

(e) New facilities. For purposes of this section, for each rate year a new facility is defined as a facility delivering its first day of service to a DHS recipient after the first day of the open enrollment period, as defined in subsection (c) of this section, for that rate year. Facilities that underwent an ownership change are not considered new facilities. For purposes of this subsection, an acceptable enrollment contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized signator as per the DHS Form 2031 applicable to the provider's contract or ownership type, and received by HHSC within 30 days of the mailing of notification to the facility by HHSC that such an enrollment contract amendment must be submitted. New facilities will receive the direct care staff base rate [associated with minimum staffing requirements] as determined in subsection (k) [(j)(1)] of this section [until:] with no enhancements.

[(1)] For new [for] facilities specifying their desire to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (l) [(3)] of this section, effective on the first day of the month following receipt by HHSC of the acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited as per subsection (j)(3) of this section during the most recent enrollment, enrollment for new facilities will be subject to that same limitation.

[(2) for facilities specifying their desire not to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (k) of this section retroactive to the first day of their contract.]

[(3) for facilities from which an acceptable enrollment contract amendment is not received, the direct care staff rate is adjusted as specified in subsection (k) of this section retroactive to the first day of their contract.]

(f) Staffing and Compensation Report submittal requirements. Staffing and Compensation Reports must be submitted as follows:

(1) Annual Staffing and Compensation Report. All participating [contracted] facilities will provide HHSC, in a method specified by HHSC, an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services from the first day of the rate year through the last day of the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section [for participants], and as the basis for determining the spending requirements and recoupment amounts as described in subsection (o) of this section [for all facilities]. Participating facilities failing to submit an acceptable Annual Staffing and Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC.

(A) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by DHS as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a Staffing and Compensation Report covering the period from the day after the date recognized by DHS as the ownership-change effective date to the end of the rate year.

(B) Participating facilities [Facilities] whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by DHS as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(C) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the rate year to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Participating facilities [Facilities] whose cost report year coincides with the state of Texas fiscal year as per §355.105(b)(5) (relating to General Reporting and Documentation Requirements, Methods and Procedures) are exempt from the requirement to submit a separate Annual Staffing and Compensation Report. For these facilities, their cost report will be considered their Annual Staffing and Compensation Report.

(2) Other reports. HHSC may require other Staffing and Compensation Reports from all facilities as needed.

(3) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a Staffing and Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until an acceptable Staffing and Compensation Report is received by HHSC. Participating facilities [Facilities] that do not submit a Staffing and Compensation Report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation [10% of direct care dollars] paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay

to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent. In addition, participating facilities with an ownership change or contract termination that do not submit a Staffing and Compensation report completed in accordance with all applicable rules within 60 days of the change in ownership or contract termination will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation [~~10% of direct care dollars~~] paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent.

(4) Provider-initiated amended accountability reports. Reports must be received prior to the date the provider is notified of compliance with spending and/or staffing requirements for the report in question as per subsections (n) and/or (o) of this section.

(g) Report contents. Annual Staffing and Compensation Reports will include any information required by HHSC to implement this enhanced direct care staff rate.

(h) Completion of Reports. All Staffing and Compensation Reports must be completed in accordance with the provisions of §§355.102-355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the state fiscal year 2002 report, all Staffing and Compensation Reports must be completed by preparers who have attended the required nursing facility cost report training as per §355.102(d) (relating to General Principles of Allowable and Unallowable Costs). For Staffing and Compensation Reports for even numbered state fiscal years, preparers must have attended the cost report training for that same even numbered year. For Staffing and Compensation Reports for odd numbered state fiscal years, preparers must have attended the most recent cost report training sessions provided prior to the due date of the Staffing and Compensation Report.

(i) Enrollment. Facilities choosing to participate in the enhanced direct care staff rate must submit to HHSC a signed contract amendment as described in subsection (d) of this section, before the end of the open enrollment period. Participation will remain in effect, subject to availability of funds, until the facility notifies HHSC in accordance with subsection (r) of this section that it no longer wishes to participate or the facility is removed from participation as described in subsection (n) of this section. If HHSC determines that funds are not available to continue participation, facilities will be notified as per subsection (ee) of this section. Facilities voluntarily withdrawing from participation will have their participation end effective on the date of the withdrawal as determined by HHSC.

(j) Determination of staffing requirements for participants. Facilities choosing to participate in the enhanced direct care staff rate agree to maintain certain direct care staffing levels. In order to permit facilities the flexibility to substitute RN, LVN and aide (Medication Aide and nurse aide) staff resources and, at the same time, comply with an overall nursing staff requirement, total nursing staff requirements are expressed in terms of LVN equivalent minutes. Conversion factors to convert RN and aide minutes into LVN equivalent minutes are based upon most recently available, reliable relative compensation levels for the different staff types.

(1) Minimum staffing levels. HHSC determines, for each participating facility, minimum LVN equivalent staffing levels as follows.

(A) Determine minimum required LVN equivalent minutes per resident day of service for various types of residents using time study data, cost report information, and other appropriate data sources.

(i) Determine LVN equivalent minutes associated with Medicare residents based on the data sources from subparagraph (A) of this paragraph adjusted for estimated acuity differences between Medicare and Medicaid residents.

(ii) Determine minimum required LVN equivalent minutes per resident day of service associated with each Texas Index for Level of Effort (TILE) case mix group and additional minimum required minutes for residents reimbursed under the TILE system who also qualify for supplemental reimbursement for ventilator care or pediatric tracheostomy care as described in §355.307 of this title (relating to Reimbursement Setting Methodology) based on the data sources from subparagraph (A) of this paragraph adjusted for acuity differences between Medicare and Medicaid residents and other factors.

(B) Based on most recently available, reliable utilization data, determine for each facility the total days of service by TILE group, days of service provided to TILE residents qualifying for Medicaid supplemental reimbursement for ventilator or tracheostomy care, total days of service for Medicare Part A residents in Medicaid-contracted beds, and total days of service for all other residents in Medicaid-contracted beds.

(C) Multiply the minimum required LVN equivalent minutes for each TILE group and supplemental TILE reimbursement group from subparagraph (A) of this paragraph by the facility's Medicaid days of service in each TILE group and supplemental TILE reimbursement group from subparagraph (B) of this paragraph and sum the products.

(D) Multiply the minimum required LVN equivalent minutes for Medicare residents by the facility's Medicare Part A days of service in Medicaid-contracted beds.

(E) Effective for reporting periods beginning on or after September 1, 2001, divide the sum from subparagraph (C) of this paragraph by the facility's total Medicaid days of service, with a day of service for a Medicaid TILE recipient who also qualifies for a supplemental TILE reimbursement counted as one day of service, compare this result to the minimum required LVN-equivalent minutes for a TILE 207 and multiply the lower of the two figures by the facility's other resident days of service in Medicaid-contracted beds.

(F) Sum the results of subparagraphs (C), (D) and (E) of this paragraph, divide the sum by the facility's total days of service in Medicaid-contracted beds, with a day of service for a Medicaid TILE recipient who also qualifies for a supplemental TILE reimbursement counted as one day of service. The results of these calculations are the minimum LVN equivalent minutes per resident day a participating facility must provide.

(2) Enhanced staffing levels. Participating facilities desiring to staff above the minimum requirements from paragraph (1) of this subsection may request LVN-equivalent staffing enhancements from an array of LVN-equivalent enhanced staffing options and associated add-on payments during open enrollment. Add-on payments and staffing requirements associated with staffing increments between the minimum staffing requirement from paragraph (1) of this subsection

and the minimum staffing requirement for participation in effect in state fiscal year 2003, adjusted based upon most recently available, reliable relative compensation levels for the different staff types, will be adjusted for variations in facility case mix.

(3) Granting of staffing enhancements. HHSC divides all requested enhancements into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year desiring to be granted additional enhancements. For the granting of enhancements to be effective on or after September 1, 2001, for an enhancement to qualify as a pre-existing enhancement a facility must have actually met the enhancement's staffing requirements during the most recent reporting period from which reliable data is available at the time qualification is determined. [~~Enhancements held by nursing facilities whose staffing requirements were not met during the most recent reporting period from which reliable data is available will qualify as pre-existing if the facility submitted, with that staffing report, documentation that demonstrates to the satisfaction of HHSC that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel. If the report from the subsequent rate year indicates that the staffing requirement was again not met, the unmet staffing will no longer be considered pre-existing.~~] Using the process described herein, HHSC first determines the distribution of carry-over enhancements. If HHSC determines that funds are not available to carry over some or all pre-existing enhancements, facilities will be notified as per subsection (ee) of this section. If funds are available after the distribution of carry-over enhancements, HHSC then determines the distribution of newly requested enhancements. HHSC may not distribute newly requested enhancements to facilities owing funds identified for recoupment from subsections (n) and/or (o) of this section.

(A) HHSC determines projected units of service by TILE group for facilities requesting each enhancement option, [~~and~~] multiplies these units [~~this number~~] by the rate add-on associated with that enhancement option for each TILE group as determined in subsection (l) of this section and sums the products.

(B) HHSC compares the sum of the sums [~~products~~] from subparagraph (A) of this paragraph to available funds.

(i) If the product is less than or equal to available funds, all requested enhancements are granted.

(ii) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing staffing levels and staffing needs, HHSC may grant certain enhancement options priority for distribution.

(4) Notification of granting of enhancements. Participating facilities are notified, in a manner determined by HHSC, as to the disposition of their request for staffing enhancements.

(k) Determination of direct care staff base rate [~~rates for nonparticipating facilities.~~]

(1) Determine the sum of recipient care costs from the direct care staff cost center in subsection (a) of this section in all nursing facilities included in the Texas Nursing Facility Cost Report database used to determine the nursing facility rates in effect on January 1, 2000 (hereinafter referred to as the initial database).

(2) Adjust the sum from paragraph (1) of this subsection in order to account for inflation utilizing the inflation factors used in the determination of the nursing facility rates in effect January 1, 2000.

(3) Divide the result from paragraph (2) of this subsection by the sum of recipient days of service in all facilities in the initial database and multiply the result by 1.07. The result is the average direct care staff base rate component for all [~~ineligible~~] facilities.

(4) To calculate the direct care staff per diem base rate component for all [~~nonparticipating~~] facilities for each of the 11 TILE case mix groups and for the default group, multiply each of the standardized statewide case mix indices associated with the initial database by the average direct care staff base rate component from paragraph (3) of this subsection.

(5) The direct care staff per diem base rates will remain constant except as follows. For rates effective September 1, 2000, the rate derived in paragraph (3) of this subsection will be multiplied by 1.016. Effective September 1, 2001, and thereafter, the direct care staff per diem rate will remain constant except for adjustments necessitated by increases in the personal consumption expenditures (PCE) chain-type price index. For rates effective September 1, 2003 and September 1, 2004, the direct care staff per diem base rate will be equal to the direct care staff rate for nonparticipating facilities in effect August 31, 2003 adjusted as necessary to remain within appropriations. Adjustments necessary to remain within appropriations will apply equally in percentage terms across each component of the nursing facility rate and each add-on.

[~~(l) Determination of direct care staff rates for participating facilities. Direct care staff rates for participating facilities as defined in subsection (i) will be determined as follows:~~]

[~~(1) Determine the direct care staff rate associated with maintaining LVN equivalent minutes at the minimum levels required for participation.~~]

[~~(A) Determine the sum of recipient care costs from the direct care staff cost center in subsection (a) in all nursing facilities as included in the initial database from subsection (k)(1) of this section.~~]

[~~(B) Adjust the sum from subparagraph (A) of this paragraph as specified in §355.108 of this title (relating to Determination of Inflation Indices) to inflate the costs to the prospective rate year.~~]

[~~(C) Divide the result from subparagraph (B) of this paragraph by the sum of recipient days of service in all facilities in the initial database from subsection (k)(1) of this section and multiply the result by 1.07. The result is the average direct care staff rate associated with maintaining LVN equivalent minutes at the minimum levels required for participation.~~]

[~~(D) Case mix adjustment of direct care staff per diem rate component. To calculate the direct care staff per diem rate component associated with maintaining LVN equivalent minutes at the minimum levels required for participation for each of the 11 TILE case mix groups, for the default group and for each supplemental reimbursement group, multiply each of the standardized statewide case mix indices associated with the initial database from subsection (k)(1) of this section by the average direct care staff rate component from subparagraph (C) of this paragraph.~~]

[~~(E) The initial database from subsection (k)(1) of this section used in determining the direct care staff rates will not change,~~]

except for adjustments for inflation from subparagraph (B) of this paragraph. HHSC may also recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).]

[(2) Determine the direct care staff rate add-on associated with each enhanced staffing level. Taking into consideration the most recently available, reliable data relating to LVN equivalent compensation levels, HHSC will determine a per diem add-on payment for each enhanced staffing level.]

(l) [(3)] Determine each participating facility's total direct care staff rate. Each participating facility's total direct care staff rate will be equal to the direct care staff base rate [associated with maintaining LVN equivalent minutes at the minimum levels required for participation] from [paragraph (1) of this] subsection (k) of this section plus any add-on payments associated with enhanced staffing levels selected by and awarded to the facility during open enrollment. HHSC will determine a per diem add-on payment for each enhanced staffing level taking into consideration the most recently available, reliable data relating to LVN equivalent compensation levels. Add-on payments associated with staffing increments between the minimum staffing requirement from subsection (j)(1) of this section and the minimum staffing requirement for participation in effect in state fiscal year 2003, adjusted based upon most recently available, reliable relative compensation levels for the different staff types, will be adjusted for variations in facility case mix.

(m) Staffing requirements for participating facilities. Each participating facility will be required to maintain adjusted LVN-equivalent minutes equal to those determined in subsection (j) of this section. Each participating facility's adjusted LVN-equivalent minutes maintained during the reporting period will be determined as follows.

(1) Determine unadjusted LVN-equivalent minutes maintained. Upon receipt of the staffing and spending information described in subsection (f) of this section, HHSC will determine the unadjusted LVN-equivalent minutes maintained by each facility during the reporting period.

(2) Determine adjusted LVN-equivalent minutes maintained. Compare the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection to the LVN-equivalent minutes required of the facility as determined in subsection (j) of this section. The adjusted LVN-equivalent minutes are determined as follows:

(A) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is greater than or equal to the number of LVN-equivalent minutes required for the facility or less than the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section; the facility's adjusted LVN-equivalent minutes maintained is equal to its unadjusted LVN-equivalent minutes; or

(B) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is less than the number of LVN-equivalent minutes required of the facility, but greater than or equal to the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section, the following steps are performed.

(i) Determine what the facility's accrued Medicaid fee-for-service direct care revenue for the reporting period would have been if their staffing requirement had been set at a level consistent with the highest LVN-equivalent minutes that the facility actually maintained, as defined in subsection (j) of this section.

(ii) Determine the facility's adjusted accrued direct care revenue by multiplying the accrued direct care revenue from clause (i) of this subparagraph by 0.85.

(iii) Determine the facility's accrued allowable Medicaid fee-for-service direct care staff expenses for the rate year.

(iv) Determine the facility's direct care spending surplus for the reporting period by subtracting the facility's adjusted accrued direct care revenue from clause (ii) of this subparagraph from the facility's accrued allowable direct care expenses from clause (iii) of this subparagraph.

(v) If the facility's direct care spending surplus from clause (iv) of this subparagraph is less than or equal to zero, the facility's adjusted LVN-equivalent minutes maintained is equal to the unadjusted LVN-equivalent minutes maintained as calculated in paragraph (1) of this subsection.

(vi) If the facility's direct care spending surplus from clause (iv) of this subparagraph is greater than zero, the adjusted LVN-equivalent minutes maintained by the facility during the reporting period is set equal to the facility's direct care spending surplus from clause (iv) of this subparagraph divided by the per diem enhancement add-on as determined in subsection (l)[(2)] of this section plus the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection. according to the following formula: (Direct Care Spending Surplus / Per Diem Enhancement Add-on for One LVN-equivalent Minute) + Unadjusted LVN-equivalent Minutes. Per diem enhancement add-on payments associated with staffing increments between the minimum staffing requirement from subsection (j)(1) of this section and the minimum staffing requirement for participation in effect in state fiscal year 2003, adjusted based upon most recently available, reliable relative compensation levels for the different staff types, will be adjusted for variations in facility case mix.

(n) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in subsection (j) of this section. HHSC will determine the adjusted LVN-equivalent minutes maintained by each facility during the reporting period by the method described in subsection (m) of this section.

(1) HHSC or its designee will recoup all direct care staff revenues associated with unmet staffing goals from participating facilities that fail to meet their staffing requirements during the reporting period.

(2) In addition, effective the first day of the rate year immediately following the determination that a facility fail [facilities that failed] to maintain the required weighted average LVN-equivalent minutes for the reporting period by four or more adjusted LVN-equivalent minutes or that a facility that was[, and facilities] required to provide at least four LVN-equivalent minutes above its [their] minimum staffing requirement, as determined in subsection (j)(1) of this section[, and that] failed [fail] to meet its [their] minimum staffing requirement for the reporting period, [are subject to the following:]

[(A) Effective the first day of the rate year immediately following the determination that a facility met the qualifications detailed in paragraph (2) of this subsection,] the facility will have its enrollment in the enhancement program limited to a level consistent with the highest adjusted LVN-equivalent minutes, as defined in subsection (m) of this section, that the facility actually attained plus two additional LVN-equivalent minutes. If the adjusted level attained is more than two LVN-equivalent minutes below the minimum direct care staff requirement for participation, the facility will be precluded from enrollment in

the enhancement program and will be a nonparticipant. These enrollment limitations will remain in effect for the longer of either one full rate year or until the first day of the rate year that begins after funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee.

[(B) HHSC or its designee will collect interest from facilities that meet the qualifications of paragraph (2) of this subsection as follows:]

[(i) Determine the average excess funds available to the provider over the reporting period as the recoupment amount from paragraph (1) of this subsection divided by two.]

[(ii) Determine the annualized average three-month United States Treasury Bill rate during the provider's reporting period as the unweighted monthly average for all months included, either partially or fully, in the reporting period.]

[(iii) Determine the interest rate on the recoupment amount by multiplying the annualized average rate from clause (ii) of this subparagraph by the number of days in the reporting period divided by the number of days in the rate year.]

[(iv) Determine the interest on the recoupment amount by multiplying the recoupment interest rate calculated in clause (iii) of this subparagraph by the average excess funds available to the provider over the reporting period from clause (i) of this subparagraph.]

(o) Spending requirements for participants. [all facilities. All] Participating facilities[, participants and nonparticipants alike,] are subject to a direct care staff spending requirement with recoupment calculated as follows:

(1) At the end of the rate year, a spending floor will be calculated by multiplying accrued Medicaid fee-for-service direct care staff revenues (net of revenues recouped by HHSC or its designee due to the failure of the facility to meet a staffing requirement as per subsection (n) of this section) by 0.85.

(2) Accrued allowable Medicaid direct care staff fee-for-service expenses for the rate year will be compared to the spending floor from paragraph (1) of this subsection. HHSC or its designee will recoup the difference between the spending floor and accrued allowable Medicaid direct care staff fee-for-service expenses from facilities whose Medicaid direct care staff spending is less than their spending floor.

(3) At no time will a participating facility's direct care rate after spending recoupment be less than the direct care base rate.

(p) Mitigation of recoupment. Recoupment of funds described in subsection (o) of this section may be mitigated as follows.

[(1)] Dietary and Fixed Capital Mitigation. Recoupment of funds described in subsection (o) of this section may be mitigated by high dietary and/or fixed capital expenses as follows.

(1) [(A)] Calculate dietary cost deficit. At the end of the facility's rate year, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If costs are greater than revenues, the dietary per diem cost deficit will be equal to the difference between accrued, allowable Medicaid dietary per diem costs and accrued Medicaid dietary per diem revenues. If costs are less than revenues, the dietary cost deficit will be equal to zero.

(2) [(B)] Calculate dietary revenue surplus. At the end of the facility's rate, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If revenues are greater than costs, the dietary per diem revenue surplus will be equal to the difference between accrued Medicaid dietary per diem revenues and accrued, allowable Medicaid dietary per diem costs. If revenues are less than costs, the dietary revenue surplus will be equal to zero.

(3) [(C)] Calculate fixed capital cost deficit. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(a)(2)(A) [(B)] of this title (relating to Cost Finding Methodology). If costs are greater than revenues, the fixed capital cost per diem deficit will be equal to the difference between accrued, allowable Medicaid fixed capital per diem costs and accrued Medicaid fixed capital per diem revenues. If costs are less than revenues, the fixed capital cost deficit will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(4) [(D)] Calculate fixed capital revenue surplus. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(a)(2)(A) [(B)]of this title (relating to Cost Finding Methodology). If revenues are greater than costs, the fixed capital revenue per diem surplus will be equal to the difference between accrued Medicaid fixed capital per diem revenues and accrued, allowable Medicaid fixed capital per diem costs. If revenues are less than costs, the fixed capital revenue surplus will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(5) [(E)] Facilities with a dietary per diem cost deficit will have their dietary per diem cost deficit reduced by their fixed capital per diem revenue surplus, if any. Any remaining dietary per diem cost deficit will be capped at $2.00 per diem.

(6) [(F)] Facilities with a fixed capital cost per diem deficit will have their fixed capital cost per diem deficit reduced by their dietary revenue per diem surplus, if any. Any remaining fixed capital per diem cost deficit will be capped at $2.00 per diem.

(7) [(G)] Each facility's recoupment, as calculated in subsection (o) of this section, will be reduced by the sum of that facility's dietary per diem cost deficit as calculated in subparagraph (E) of this paragraph and its fixed capital per diem cost deficit as calculated in subparagraph (F) of this paragraph.

[(2) Performance-based Mitigation. Recoupment of funds described in paragraph (1)(G) of this subsection will be mitigated based upon each facility's compliance with state and federal regulations as well as on the basis of resident outcomes as follows.]

[(A) Calculation of Performance-based Mitigation Index. Calculate the performance-based mitigation index (PMI) using the formula: PMI = (A+B) x C Where "A", "B", and "C" are the performance weights as detailed in 1 TAC §§355.309(l), (m), and (i) (relating to Performance-based Add-on Payment Methodology) for potential advantages, potential disadvantages, and regulatory compliance, respectively. The performance weights used in the calculation of the PMI will be those calculated for the service period as defined in §355.309 (relating to Performance-based Add-on Payment Methodology) that coincides with the rate year to which the recoupment described in subsection (o) of this section applies.]

[(B) Recoupment eligible for Performance-based Mitigation. Recoupment eligible for Performance-based Mitigation is limited to what the facility's recoupment as described in paragraph (1)(G) of this paragraph would have been if the facility had been a nonparticipant in the enhancement program during the reporting period.]

[(C) Calculation of Performance-based Mitigation. For each facility, multiply the PMI from subparagraph (A) of this paragraph by the recoupment eligible for Performance-based Mitigation from subparagraph (B) of this paragraph. The resulting product is the performance-based mitigation.]

[(D) Determination of recoupment after Performance-based Mitigation. Each facility's recoupment as calculated in paragraph (1)(G) of this subsection will be reduced by that facility's performance-based mitigation as described in subparagraph (C) of this paragraph.]

[(E) In cases where a responsible entity has requested to have its contracts' compliance with the spending requirements evaluated in the aggregate, performance-based mitigation will be based on the lowest PMI associated with any of its contracts.]

[(F) Facilities, for which a PMI cannot be calculated due to missing, invalid or unverifiable data are not eligible for performance-based mitigation. Facilities that are missing a PMI cannot be included in the group of facilities to be aggregated as defined in subsection (aa), and must have their spending requirement determined on a facility-specific basis.]

[(G) Facilities whose contracts are terminated, either voluntarily or involuntarily, prior to the calculation of the performance weights described in subparagraph (A) of this paragraph are not eligible for performance-based mitigation.]

(q) Adjusting staffing requirements. Facilities that determine that they will not be able to meet their staffing requirements from subsection (m) of this section may request a reduction in their staffing requirements and associated rate add-on. These requests will be effective on the first day of the month following approval of the request.

(r) Voluntary withdrawal. Facilities wishing to withdraw from participation must notify HHSC in writing by certified mail. Facilities voluntarily withdrawing must remain nonparticipants for the remainder of the rate year.

(s) Notification of recoupment based on Annual Staffing and Compensation Report. Facilities will be notified, in a manner specified by HHSC, within 90 days of the determination of their recoupment amount by HHSC [due date of their Annual Staffing and Compensation Report or within 90 days of the date the report is submitted, whichever is later,] of the amount to be repaid to HHSC or its designee. If a subsequent review by HHSC or audit results in adjustments to the Annual Staffing and Compensation Report as described in subsection (f)(1) of this section that changes the amount to be repaid to HHSC or its designee, the facility will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC or its designee will recoup any amount owed from a facility's vendor payment(s) following the date of the notification letter.

(t) Vendor hold. Facilities required to submit a Staffing and Compensation Report due to a change of ownership or contract termination as described in subsection (f)(1)(A)-(B) of this section will have funds held as per 40 TAC §19.2308(2) (relating to Change of Ownership) until an acceptable Staffing and Compensation Report is received by HHSC and funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee. HHSC or its designee will recoup any amount owed from the facility's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (x) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all DHS contracts controlled by the responsible entity and will bar the responsible entity from enacting any new contracts with DHS until repayment is made in full.

(u) Failure to document staff time and spending. Undocumented direct care staff and contract labor time and compensation costs will be disallowed and will not be used in the determination of direct care staff time and costs per unit of service.

(v) All other rate components. All other rate components will be calculated as specified in §355.307 of this title (relating to Reimbursement Setting Methodology) and will be uniform for all providers.

(w) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110(a)(3)(B) of this title (relating to Informal Reviews and Formal Appeals).

(x) Responsible entities. The contracted provider, owner, or legal entity that received the revenue to be recouped upon is responsible for the repayment of any recoupment amount.

(y) Change of ownership. Participation in the enhanced direct care staff rate confers to the new owner as defined in 40 TAC §19.2308 (relating to Change of Ownership) when there is a change of ownership. The new owner is responsible for the reporting requirements in subsection (f) of this section for any reporting period days occurring after the change. If the change of ownership occurs during an open enrollment period as defined in subsection (c) of this section, then the owner recognized by DHS on the last day of the enrollment period may request to modify the enrollment status of the facility in accordance with subsection (d) of this section. [The new owner may request to become a participant or receive a higher enhancement level than that conferred by submitting an acceptable enrollment contract amendment to HHSC. To be acceptable, the enrollment contract amendment must be received by HHSC Rate Analysis no later than 90 days from the date the new owner is notified in writing by DHS of the ownership change effective date, be completed according to instructions, be signed by an authorized signator as per DHS Form 2031, Corporate Board of Directors Resolution, and be legible. Such requests will be granted within available funds to be effective on the ownership change effective date.]

(z) Contract cancellations. If a facility's Medicaid contract is cancelled before the first day of an open enrollment period as defined in subsection (c) of this section and the facility is not granted a new contract until after the last day of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the date when the facility's contract was cancelled will be reinstated when the facility is granted a new contract, if it remains under the same ownership.

(aa) In cases where a parent company, sole member, or governmental body controls more than one nursing facility (NF) contract, the parent company, sole member, or governmental body may request at the time each Annual Staffing and Compensation Report is submitted, in a manner prescribed by HHSC, to have its contracts' compliance with the spending requirements detailed in subsection (o) of this section for the applicable reporting period evaluated in the aggregate for all NF contracts it controlled at the end of the rate year or at the effective date of the change of ownership or termination of its last NF contract. In limited [liability] partnerships in which the same single general partner controls all the limited [liability] partnerships, that single general partner may make this request. Other such requests will be reviewed on a case-by-case basis. A new request to have compliance

with spending requirements evaluated in the aggregate must be submitted for each reporting period. NF contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (o) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(bb) Medicaid Swing Bed Program for Rural Hospitals. When a rural hospital participating in the Medicaid swing bed program furnishes NF nursing care to a Medicaid recipient under 40 TAC §19.2326 (relating to Medicaid Swing Bed Program for Rural Hospitals), DHS makes payment to the hospital using the same procedures, the same case-mix methodology and the same TILE rates that HHSC authorizes for reimbursing NFs participating in the enhanced direct care staff rate at the minimum level required for participation. These hospitals are not subject to the staffing and spending requirements detailed in this section.

(cc) Reinvestment. HHSC will reinvest recouped funds in the enhanced direct care staff rate program, to the extent that there are qualifying facilities.

(1) Identify qualifying facilities. Facilities meeting the following criteria during the most recent completed reporting period are qualifying facilities for reinvestment purposes.

(A) The facility was a participant in the enhanced direct care staff rate.

(B) The facility's unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section were greater than the number of LVN-minutes required of the facility as determined in subsection (j) of this section.

(C) The facility met its spending requirement as determined in subsection (o) of this section.

(D) An acceptable Annual Staffing and Compensation Report for the reporting period was received by HHSC Rate Analysis at least 30 days prior to the date distribution of available reinvestment funds was determined.

(E) The DHS contract that was in effect for the facility during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined.

(2) Distribution of available reinvestment funds. Available funds are distributed as described below.

(A) HHSC determines units of service provided during the most recent completed reporting period by each qualifying facility achieving, with unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section, each enhancement option above the enhancement option awarded to the facility during the reporting period and multiplies this number by the rate add-on associated with that enhancement in effect during the reporting period. Per diem enhancement add-ons associated with staffing increments between the minimum staffing requirement from subsection (j)(1) of this section and the minimum staffing requirement for participation in effect in state fiscal year 2003, adjusted based upon the most recently available, reliable relative compensation levels for the different staff types, will be adjusted for variations in facility case mix.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all achieved enhancements for qualifying facilities are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until achieved enhancements are granted within available funds.

(3) All retroactive enhancements are subject to spending requirements detailed in subsection (o) of this section. Revenue from retroactive enhancements is not eligible for mitigation of spending recoupment as described in subsection (p) of this section.

(4) Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(5) Notification of reinvested enhancements. Qualifying facilities are notified in a manner determined by HHSC, as to the award of reinvested enhancements.

(dd) Disclaimer. Nothing in these rules should be construed as preventing facilities from adding direct care staff in addition to those funded by the enhanced direct care staff rate.

(ee) Notification of lack of available funds. If HHSC determines that funds are not available to continue participation for facilities from which it has not received an acceptable request to modify their enrollment by the last day of an enrollment period as per subsection (d) of this section, to maintain participation until a facility notifies it that the facility no longer wishes to participate or is removed from participation as per subsection (i), or to fund carry-over enhancements as per subsection (j)(3) of this section, HHSC will notify providers in a manner determined by HHSC that such funds are not available.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 424-6576

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1 TAC §355.312

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 355, Medicaid Reimbursement Rate. Chapter 355 describes the reimbursement methodology of the Texas medical assistance (Medicaid) program. HHSC proposes to amend §355.312, concerning reimbursement setting methodology - liability insurance costs, in its Medicaid Reimbursement Rates chapter. The purpose of the amendment is to clarify how the add-on rate for liability insurance costs is calculated, to clarify the definition of purchased general and professional liability insurance, and to detail the process nursing facilities must complete with regard to independently procured insurance before the add-on payment will be made for this type of insurance.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the

section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Steve Lorenzen, Director of Rate Analysis, has determined that during the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section is that the liability insurance add-on rate will only be paid to nursing facilities with legitimate liability insurance coverage. In addition, the clarifications will increase provider understanding of the program.

There is no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by these section.

Questions about the content of this proposal may be directed to Carolyn Pratt (telephone: 512-685-3127; FAX: 512-685-3104) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Ms. Pratt via facsimile or mail to HHSC Rate Analysis, Mail Code H-400, 1100 West 49th Street, Austin, TX 78756-3101, within 30 days of publication in the *Texas Register*. For further information regarding the proposal or to make the proposal available for public review, contact local offices of DHS or Carolyn Pratt at (512) 685-3127 in HHSC Rate Analysis.

A public hearing on the proposed amendment is scheduled for Wednesday, July 16, 2003, from 2:00 pm until 5:00 pm. The hearing will be held in room 1410 at the Brown-Heatly Building, 4900 N. Lamar Blvd., Austin, Texas 78751.

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties; §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

The amendment implements the Government Code, §§531.033 and 531.021(b).

§355.312. Reimbursement Setting Methodology--Liability Insurance Costs.

(a) Definitions.

(1) Purchased liability insurance--Either general or professional liability insurance that was purchased from a commercial carrier or a non-profit service corporation in an arm's-length transaction that provides for the shifting of risk to the unrelated party. The commercial carrier or non-profit service corporation must meet the requirements as set by the Texas Department of Insurance (TDI) for authorized insurance.

(2) Self-insurance--Self-insurance is a means whereby a contracted provider undertakes the risk to protect itself against anticipated liabilities by providing funds equivalent to liquidate those liabilities. If a provider enters into an arrangement with an unrelated party that does not provide for the shifting of risk to the unrelated party, such an agreement shall be considered self-insurance. Self-insurance is not purchased liability insurance.

(b) Effective September 1, 2003, payment rates for purchased general and professional liability insurance will be determined as follows:

(1) Determine the portion of the general/administration rate component from 1 TAC §355.307 (relating to Reimbursement Setting Methodology) attributable to allowable liability insurance costs.

(2) Determine the amount of total dollars that would be expended if the liability rate component from paragraph (1) of this subsection were paid uniformly to all providers during the rate effective period.

(3) Estimate the number of days of service that will be covered by purchased liability insurance during the rate period.

(4) Divide the total dollars available for liability insurance from paragraph (2) of this subsection by the estimated number of days of service that will be covered by purchased liability insurance during the rate period from paragraph (3) of this subsection. Estimate the proportion of this per diem amount accruing from general liability insurance and the proportion accruing from professional liability insurance to determine the payment rate for each day of purchased general liability insurance and the payment rate for each day of purchased professional liability insurance.

(5) Payment rates for purchased general and professional liability insurance may be adjusted as often as HHSC determines is necessary to ensure that the total dollars expended during the rate period do not exceed the amount appropriated for this purpose.

(6) Since these payment rates are determined through an allocation of available appropriations among estimated units of service covered by purchased liability insurance, a public rate hearing is not required when adjustments are made to the payment rates.

(7) Providers will be notified, in a manner determined by HHSC, of adjustments to the payment rates for purchased general and professional liability insurance.

(8) Providers who purchase general liability insurance without professional liability insurance are only eligible to receive payment of the rate for purchased general liability insurance. Providers who purchase professional liability insurance without general liability insurance are only eligible to receive payment of the rate for purchased professional liability insurance. Providers who purchase both general and professional liability insurance are eligible to receive payment of both rates.

(c) Purchased liability insurance issued through insurance companies meeting any one of the following criteria will be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance as appropriate. These insurance companies have been determined by the TDI to be authorized to issue liability insurance policies in the State of Texas.

(1) An insurance company identified as an admitted, licensed, insurer authorized to write liability insurance in Texas. This type of insurance company is designated as "active" on the TDI website.

(2) An insurance company that is an eligible surplus lines insurer which requires that there be a Texas licensed surplus lines agent placing the coverage with the insurance company. This type of insurance company is designated as "eligible" on the TDI website.

(3) The Texas Medical Liability Insurance Underwriting Association (JUA). This insurance arrangement is designated as "active" on the TDI website.

(d) Independently procured insurance will not be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance. To qualify for the purchased general and/or professional liability insurance payment rates, the coverage must have been purchased from an independently procured insurance company determined by TDI to be authorized to sell liability insurance. The liability insurance payment rates will not be paid to any nursing facility until HHSC Rate Analysis has received from the provider a written determination issued by TDI that the insurance is authorized liability insurance. A separate determination must be received for each insurance policy before payment of the liability insurance rate will be made to the nursing facilities covered by the policy. If, by September 1, 2003, TDI has not made a determination of authorized liability insurance on policies in effect prior to September 1, 2003, HHSC will stop payment of the liability insurance payment rates until HHSC Rate Analysis receives the written determination from the provider that TDI has determined the liability insurance to be authorized. Upon receipt of the determination by TDI that the independently procured insurance is authorized liability insurance, payments will be made retroactively to the effective date of the insurance policy or the date the liability insurance rates were stopped, whichever is later.

(e) Liability insurance payments will not be made to facilities that obtain unauthorized insurance. It is the responsibility of the nursing facility provider to ensure that liability insurance submitted for payment is authorized.

(f) To qualify for the purchased liability insurance payment rates each contracted entity must submit the following to HHSC Rate Analysis:

(1) A completed liability insurance coverage certification form provided by HHSC Rate Analysis, signed by an authorized signatory for the provider as per Texas Department of Human Services Form 2031.

(2) A copy of evidence of coverage to include a certificate of insurance, the ACORD 25-S or similar document provided by the insurance company or agent that includes the type of coverage, effective and expiration dates of coverage, insurer, policy, and form number of policy contract, agent/producer, and claims made/occurrences. For catastrophic or excess liability coverage, the evidence of coverage must also include the sum that the catastrophic or excess coverage must exceed to become payable. A binder is not acceptable as evidence of insurance.

(3) For independently procured liability insurance, a copy of the written determination by TDI that the insurance policy was determined to be authorized liability insurance.

(g) If an insurance policy effective date is not the first day of the month, then the liability insurance payment rates will become effective the first day of the following month. If an insurance policy expiration date is not the last day of the month, then the liability insurance payment rates will be paid for the full month that includes the expiration date.

(h) It is the contracted provider's responsibility to notify HHSC Rate Analysis of any changes to liability insurance coverage including cancellation of coverage, change of insurance and renewal of coverage within 15 calendar days of the effective date of the change. Failure to notify HHSC Rate Analysis of cancellation of coverage or change of insurance could constitute Medicaid fraud. Renewals of coverage not received within 15 calendar days of the effective date of the renewal could result in the liability insurance payment rates being stopped until documentation of the renewal per subsection (f) of this section is received by HHSC Rate Analysis. [~~Effective September 1, 2001, the portion of the rate accruing from reported general liability insurance costs will only be disbursed to providers certifying that they have purchased general liability insurance acceptable to HHSC and the portion of the rate accruing from reported professional liability insurance costs will only be disbursed to providers certifying that they have purchased professional liability insurance acceptable to HHSC. Providers who cancel or fail to renew their liability coverage during a rate year must notify HHSC within two weeks of the effective date of their cancellation or failure to renew.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

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Steve Aragón
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SUBCHAPTER F. SPECIFIC REIMBURSEMENT METHODOLOGY

1 TAC §355.773, §355.775

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 355, Medicaid Reimbursement Rate. Chapter 355 describes the reimbursement methodology of the Texas medical assistance (Medicaid) program. HHSC proposes amendments to §355.773, concerning Reporting Costs by MRLA Providers, and §355.775, concerning Reimbursement Methodology for the MRLA Program.

These rules are being amended to implement fiscal accountability measures for providers transitioning from the Home and Community-Based Services (HCS) program (currently under §355.722) to the Mental Retardation Local Authority program, clarify cost reporting expectations and bring them into closer conformity to other HHSC cost reporting rules, and define a reimbursement methodology for the MRLA program separate from the HCS program (currently under §355.723). Rule §355.773 explains the cost reporting and fiscal accountability requirements for the MRLA program and rule §355.775 explains the reimbursement methodology for rate setting for the MRLA program.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years the amended rules are in effect there will be no fiscal implications to state, federal or local governments as a result of enforcing or administering these amendments.

Steve Lorenzen, Director of Rate Analysis, has determined that during the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments is to provide continuity between the reporting requirements for the HCS program and the MRLA program. There is no anticipated impact on small businesses and micro-businesses to comply with the amendments as proposed. There

are no anticipated economic costs to persons required to comply with the proposed amendments, nor any impact on local employment.

HHSC has determined that these proposed amendments do not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore do not constitute a taking under §2007.043, Government Code.

Written comments on the proposed amendments may be submitted to Judy Myers, Rate Analyst, Medicaid Rate Analysis, Texas Health and Human Services Commission, 1100 W. 49th, Austin, Texas 78756, within 30 days of publication of this proposal in the *Texas Register*.

A public hearing on the proposed amendments is scheduled for Wednesday, July 16, 2003, from 2:00 pm until 5:00 pm. The hearing will be held in room 1410 at the Brown-Heatly Building, 4900 N. Lamar Blvd., Austin, Texas 78751.

The amendments are proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties; §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

No other statutes, articles, or codes are affected by the proposed amendment.

§355.773. Reporting Costs by MRLA Providers.

(a) Submission of cost reports. All MRLA providers must submit cost reports as directed by the Health and Human Services Commission (HHSC) in accordance with §§355.701-355.709 of this title (relating to General Reimbursement Methodology for All Medicaid Assistance Programs.

[~~(b) Recordkeeping requirements. Each MRLA provider must retain records according to HHSC's requirements. MRLA providers must ensure that records are accurate and sufficiently detailed to provide the legal, financial, and statistical information requested by HHSC.~~]

[~~(c) Noncompliance with recordkeeping requirements. If an MRLA provider fails to maintain records that support the information submitted, HHSC will notify TDMHMR to place the provider on vendor hold.~~]

(b) [~~(d)~~] Cost report certification. MRLA providers [~~Providers~~] must certify the accuracy of cost reports submitted to the HHSC. MRLA providers [~~Providers~~] may be liable for civil and/or criminal penalties if the cost report is not completed according to the HHSC requirements.

(c) [~~(e)~~] Due date. MRLA providers [~~Providers~~] must submit cost reports no later than 90 days after the reporting period or 90 days after the date that the HHSC mails the form to the provider, whichever is later.

(d) [~~(f)~~] Extension of due date. The HHSC may grant extensions of due dates for good cause. Good cause is defined as a causal factor that the provider could not reasonably be expected to control. A provider must submit a request for an extension in writing to the HHSC before the cost survey or cost report due date. The HHSC will respond to a request for extension within 15 [~~10~~] working days of its receipt.

(e) Failure to submit the cost report. Failure to submit the cost report by the due date or the extension due date, if granted, will result in HHSC notifying TDMHMR to place the provider on vendor hold.

(f) [~~(g)~~] Cost data. The HHSC may at times require additional financial and statistical information to ensure the fiscal integrity of the MRLA program. [~~Each provider must submit additional information to HHSC upon request, unless the information is not at the provider's disposal.~~]

(1) Each MRLA provider must submit additional information to the HHSC upon request, unless the information is not at the MRLA provider's disposal.

(2) [~~(h) Failure to submit requested data.~~] Failure to submit acceptable cost data by the due date may result in HHSC notifying TDMHMR to place the MRLA provider on vendor hold.

(g) [~~(i)~~] Review of cost reports and data. The HHSC reviews each MRLA provider's cost reports and additionally requested cost data to ensure that the financial and statistical information submitted conforms to all applicable rules and instructions. Forms that are not completed according to the HHSC's instructions or rules may be returned to the MRLA provider for proper completion.

(h) [~~(j)~~] On-site [~~financial~~] audits. The HHSC performs a sufficient number of on-site [~~financial~~] audits to ensure the fiscal integrity of the MRLA program. The number of on-site audits performed may vary.

(i) [~~(k)~~] On-site [~~financial~~] audit standards. The HHSC or its designee performs on-site [~~financial~~] audits in a manner consistent with the generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the United States Comptroller General.

(j) Recordkeeping requirements. Each MRLA provider must retain records according to HHSC's requirements. MRLA providers must ensure that records are accurate and sufficiently detailed to provide the legal, financial, and statistical information requested by the HHSC.

(k) Noncompliance with recordkeeping requirements. If an MRLA provider fails to maintain records that support the information submitted, the HHSC will notify TDMHMR to place the provider on vendor hold.

(l) Access to records. Each provider must allow access by HHSC to any and all records necessary to verify cost data submitted to HHSC. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider that are directly or indirectly related to the provision of contracted services. Failure to allow inspection of pertinent records within 10 working days following written notice from HHSC constitutes a violation of the MRLA provider contract. If the administrative office or other entity pertaining to a multi-contract operation refuses access to records, then the penalties are extended to all of the provider's entities having Medicaid contracts with TDMHMR. Additional rules regarding access to records that are out-of-state may be found in §355.703 of this title (relating to Basic Objectives and Criteria for Review of Cost Reports).

(m) Notification of exclusions and adjustments. The HHSC will notify a provider of exclusions and any adjustments, including caps applied, to reported costs in accordance with §355.705 of this title (relating to Notification).

(n) [~~(m)~~] Reviews of exclusions or adjustments. A provider who disagrees with the HHSC's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, a

formal appeal [~~an administrative hearing~~] as specified in §355.707 of this title (relating to Reviews and Administrative Hearings).

[~~(n) Notification of exclusions and adjustments. HHSC will notify a provider of exclusions and any adjustments, including caps applied, to reported costs.~~]

(o) Fiscal Accountability. [~~Fiscal accountability is a process used to gauge the ongoing financial performance under the reimbursement rates.~~]

(1) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the MRLA program reimbursement rates.

(2) [~~(1)~~] Annual reporting. Fiscal accountability will consist of the annual reporting of direct service costs including wages, benefits, staffing, and supervisory span-of-control information from all MRLA providers. The data will be collected as part of [~~on~~] a cost report [~~survey~~] designed by the HHSC.

[~~(2) Providers are required to submit direct services costs on a survey during a uniform three-month period of the year, selected by HHSC. The survey will reflect the provider's actual direct costs for the three-month period. The direct service costs will be compared to the "direct service cost" component of the MRLA rates. Instances in which a provider's actual direct service costs, as captured by the quarterly cost surveys, are less than 85% of the direct service revenues in the model will require additional reporting of costs and other information from the provider.~~]

[~~(3) HHSC will review the results obtained from the direct services cost surveys with representatives of provider associations and advocacy groups to further refine the fiscal accountability process. Direct services cost surveys will be collected in each fiscal year. In instances in which a provider's actual direct service costs are less than 85% of the direct service revenues in the model, HHSC may require the provider to:~~]

[~~(A) report more detailed financial information;~~]

[~~(B) submit to a quality assurance survey and review;~~]

[~~(C) submit to a utilization review of all services provided; and/or~~]

[~~(D) submit to a detailed audit of all relevant financial records.~~]

(A) TDMHMR will place a vendor hold on payments to an MRLA provider whose provider agreement is being assigned or terminated. The MRLA provider will submit a cost report for the current reporting period to HHSC. Upon receipt of an appropriate cost report and repayment of any amounts due to HHSC in accordance with this section, the vendor hold will be released.

(B) HHSC will require MRLA providers to report all direct costs incurred on an annual fiscal year basis beginning with the provider's fiscal year that ends after June 30, 2003. HHSC will compare the reported direct service costs to the total direct service revenue.

(3) Direct Service Revenues are calculated by multiplying the number of units eligible for payment that have been paid for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.

(A) MRLA providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) MRLA providers whose direct service costs are between 85% and 90% of the direct service revenues will be required to pay to TDMHMR 50% of the difference between the direct service costs and 90% of the direct service revenues.

(C) MRLA providers whose direct service costs are between 80% and 85% of the direct service revenues will be required to pay to TDMHMR 100% of the difference between the direct service costs and 85% of the direct service revenues plus 50% of the difference between 85% and 90% of the direct service revenues.

(D) MRLA providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to TDMHMR the difference between the direct service costs and 95% of the direct service revenues.

(4) The fiscal accountability calculation may show an estimated amount due to TDMHMR. An MRLA provider's repayment status may change as a result of the desk reviews or outside audits of cost reports, or adjustments to claims paid to the MRLA provider for services provided in the cost reporting period. The MRLA provider will be notified of the results of these reviews and/or audits in accordance with subsection (m) of this section. If the adjustments and/or exclusions result in an amount due, or if the original estimated amount due calculation is upheld, HHSC will notify the MRLA provider of the amount due and the MRLA provider will remit the repayment amount within 60 days of notification.

(5) Repayment will be made by the following:

(A) the MRLA provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(6) MRLA providers who are required to repay revenues to TDMHMR will be jointly and severally liable for any repayment. TDMHMR will apply a vendor hold on Medicaid payments to a MRLA provider for not making the payment to TDMHMR within 60 days of receiving notice as provided in subsection (o)(4) of this section.

§355.775. Reimbursement Methodology for the MRLA Program.

(a) HHSC determines reimbursement rates according to §§355.701-355.709 of this title (relating to General Reimbursement Methodology for all TDMHMR Programs).

(b) Uniform application. Reimbursement rates apply to all providers uniformly by the type of service component provided and the individual's level-of-need.

(c) Annual and prospective rates. The HHSC sets rates to be paid to MRLA providers annually. The rates are prospective in nature.

(d) Modeled rates. Modeled rates are based on relevant cost information including a sample of historical cost information and operational experience of service providers in Texas. The rates will be based on the former Home and Community Based Services (HCS) program model, with appropriate adjustments to reflect differences between the two models. The HCS program models will be referred to as the MRLA program model effective September 1, 2003. [~~The rates will be the same as the HCS rates which are set in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-based Services (HCS)), with the exception of the case management service component, as explained in subsection (g) of this section.~~]

(e) Rates for residential support, supervised living, MRLA foster/companion care, and day habilitation vary by level of need and are paid on a daily basis.

(f) Rates for respite care are paid on a daily or hourly basis. Respite care is not a reimbursable service for individuals who are receiving MRLA program foster/companion care, supervised living, or residential support.

(g) The modeled rate for a service component developed or modified after January 1, 1997, but prior to the rebasing process initiated under subsection (i) of this section, and provided after the effective date of this rule, will be based on cost assumptions used in modeling existing rates, actual or projected utilization patterns, and the recommendations of an advisory panel consisting of program providers, department personnel, and advocates for persons with mental retardation.

(h) The administrative rate for the indirect costs of the MRLA program is paid as a flat monthly fee to the program provider. Effective June 1, 1998, the administrative rate is determined by reducing the HCS modeled rate for case management by the amount of cost related to the tasks required of a HCS provider which are not required of a MRLA provider. This reduction will be based on a detailed task analysis. Case management is not a reimbursable service under the MRLA program.

(i) The modeled rates will be analyzed to determine if rebasing is necessary in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-based Services (HCS).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8063

The Health and Human Services Commission (HHSC) proposes to amend §355.8063, concerning the reimbursement methodology for inpatient hospital services, in its Medicaid Reimbursement Rates chapter. The proposed amendments add language to allow certain Medicaid hospitals with more than 100 licensed beds the option of receiving cost-based reimbursement authorized by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The proposed amendments also add language to implement Medicaid inpatient hospital rate reimbursement reductions and reductions in reimbursement for Direct Graduate Medical Education cost (GME) mandated by the 78th Legislature. The proposed amendments will implement changes necessary to maintain cost-effective reimbursement for Medicaid hospital inpatient services within appropriated funds for the 2004-2005 biennium.

Background

Article II, Rider 24 relating to the Health and Human Services Commission contained in the General Appropriations Act, 78th Legislature, Regular Session, 2003, directs HHSC to reimburse hospitals with fewer than 100 licensed beds and certain hospitals with more than 100 licensed beds, the greater of the amount received by the hospital under the Texas Medicaid inpatient prospective payment system or the TEFRA reimbursement methodology. The inpatient prospective payments made to hospitals with fewer than 100 licensed beds and certain other hospitals with more than 100 licensed beds, described in Rider 24, may be impacted by the reimbursement reductions described in Rider 46. Article II, Rider 46 relating to the Health and Human Services Commission contained in the General Appropriations Act, 78th Legislature, Regular Session, 2003, directs HHSC to reduce hospital reimbursement and calculate the reductions without rebasing of current reimbursement factors. Article II, Rider 48 relating to the Health and Human Services Commission contained in the General Appropriations Act, 78th Legislature, Regular Session, 2003, directs HHSC to limit the amount of reimbursement for GME to amounts appropriated or allocations of appropriations made specifically for GME reimbursement. HHSC proposes to implement the changes mandated by Rider 24, 46, and 48 through the adoption of an amendment to the reimbursement methodology for inpatient hospital services.

Tom Suehs, Chief Financial Officer, has determined that for the first five years the proposed rule is in effect, there will be fiscal implications to state and local governments as a result of enforcing or administering the proposed rule. Estimated increased spending to the state arising from the provisions of the proposed rule relating to reimbursement of certain hospitals with more than 100 licensed beds will be $0 in State Fiscal Year 2004; $1,700,000 in State Fiscal Year 2005; $3,400,000 in State Fiscal Year 2006; $3,400,000 in State Fiscal Year 2007; and $3,400,000 in State Fiscal Year 2008. Estimated savings to the state arising from enforcing or administering the rate reduction provisions of the proposed rule will be $87,700,000 in State Fiscal Year 2004; $87,000,000 in State Fiscal Year 2005; $0 in State Fiscal Year 2006; $0 in State Fiscal Year 2007; and $0 in State Fiscal Year 2008. State and local governments will experience a loss of revenue as a result of enforcing or administering the rate reduction provisions of the proposed rule. The loss of state and local government revenues are estimated to be : $57,00,000 in State Fiscal Year 2004; $57,000,000 in State Fiscal Year 2005; $0 in State Fiscal Year 2006; $0 in State Fiscal Year 2007; and $0 in State Fiscal Year 2008. Estimated savings to the state arising from enforcing or administering the GME provisions of the proposed rule will be $21,318,403 in State Fiscal Year 2004 $21,323,602 in State Fiscal Year 2005 $21,323,6020 in State Fiscal Year 2006 $21,323,602 in State Fiscal Year 2007; and $21,323,602 in State Fiscal Year 2008. State and local governments also will experience a loss of revenue as a result of enforcing or administering the reduction in GME reimbursement provisions of the proposed rule. The loss of state and local government revenues is estimated to be: $40,841,000 in State Fiscal Year 2004; $42,883,000 in State Fiscal Year 2005; $42,883,000 in State Fiscal Year 2006; $42,883,000 in State Fiscal Year 2007; and $42,883,000 in State Fiscal Year 2008.

Steve Lorenzen, Director of Rate Analysis, has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the proposed section will be to provide HHSC with greater flexibility in allocating appropriations for GME and to maintain cost-effective

reimbursement for hospital inpatient services within appropriated funds for the 2004-2005 biennium. There is no anticipated impact on small businesses and micro-businesses to comply with the section as proposed as they will not be required to alter their business practices as a result of the section. There are no anticipated economic costs to persons who are required to comply with the proposed section. There is no anticipated impact on local employment.

HHSC has determined that the proposed rule is not "a major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that the proposed rule does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under §2007.043, Government Code.

Written comments on the proposal may be submitted to Scott Reasonover, Rate Analysis Department, Texas Health and Human Services Commission, 1100 West 49th Street, Austin, Texas 78756, within 30 days of publication of this proposal in the *Texas Register*. In addition, a public hearing concerning the proposed rule will be held Wednesday, July 16, 2003, at 2:00 p.m. in the public hearing room at the Texas Health and Human Services Commission, Brown Heatly Building, 4900 North Lamar Boulevard, 4th Floor Room 1410, Austin, Texas 78751-2316. To comply with federal regulations, a copy of the proposed rule is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The amendment is proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531.

§355.8063. Reimbursement Methodology for Inpatient Hospital Services.

(a) - (g) (No change.)

(h) Rebasing the standard dollar amounts. The HHSC [~~department~~] or its designee rebases the standard dollar amount for each payment division at least every three years. HHSC will not rebase or recalculate the standard dollar amounts for each payment division for admissions during the period September 1, 2003 through August 31, 2005. The relative weights are recalibrated whenever the standard dollar amounts are recalculated. The standard dollar amounts are not rebased on an interim basis unless the HHSC [~~department~~] or its designee determines that special circumstances warrant rebasing.

(i) - (m) (No change.)

(n) Adjustments to base year claims data.

(1) (No change.)

(2) The HHSC or its designee updates the standard dollar amount each year for each payment division by applying a cost-of-living update to the standard dollar amount established for the base year. The cost-of-living index for state fiscal years [~~year~~] 2003, 2004, and 2005 will not be applied to the standard dollar amount for admissions during the period September 1, 2003 [~~2002~~] through August 31, 2005 [~~2003~~]. The index used to update the standard dollar amounts is the greater of:

(A) - (B) (No change.)

(o) Reimbursement to in-state children's hospitals. The HHSC [~~department~~] or its designee reimburses in-state children's hospitals under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA) except for the cost of direct graduate medical education (DGME). For cost reporting periods beginning on or after September 1, 2003, children's hospitals with allowable DGME costs as determined under TEFRA principles will receive a pro rata share of their annual TEFRA DGME cost based on appropriations or allocations from appropriations made specifically for this purpose. The amount and frequency of interim payments will also be subject to the availability of appropriations made specifically for this purpose. Interim payments are subject to settlement at both tentative and final audit of a hospital's cost report. The HHSC [~~department~~] or its designee establishes target rates and stipulates payments per discharge, incentives, and percentage of payments. The department or its designee uses each hospital's 1987 final audited cost reporting period (fiscal year ending during calendar year 1987) as its target base period. The target base period for hospitals recognized by Medicare as children's hospitals after the implementation of this subsection is the hospital's first full 12-month cost reporting period occurring after its recognition by Medicare. The HHSC [~~department~~] or its designee annually increases each hospital's target amount for the target base period by the cost-of-living index described in subsection (n) of this section. The HHSC [~~department~~] or its designee selects a new target base period at least every three years. The HHSC [~~department~~] or its designee bases interim payments to each hospital upon the interim rate derived from the hospital's most recent tentative or final Medicaid cost report settlement. If a Title XIX participating hospital is subsequently recognized by Medicare as a children's hospital after the implementation of this subsection, the hospital must submit written notification to the HHSC [~~department~~] or its designee and include adequate documentation and claims data. Upon receipt of the written notification from the hospital, the HHSC [~~department~~] or its designee reserves the right to take 90 days to convert the hospital's reimbursement to the reimbursement methodology described in this subsection.

(p) (No change.)

(q) Hospitals with 100 or fewer licensed beds and certain hospitals with more than 100 licensed beds. The policies in this subsection apply only to hospital fiscal years beginning on or after September 1, 1989 for [~~and are applicable only to~~] hospitals with 100 or fewer licensed beds at the beginning of the hospital's fiscal year or hospital fiscal years beginning on or after September 1, 2003 for hospitals with more than 100 licensed beds at the beginning of the hospital's fiscal year, located in a county that is not in a metropolitan statistical area (MSA) as defined by the U.S. Office of Management and Budget (OMB) and designated by the Center for Medicare & Medicaid Services as a Sole Community Provider (SCH) or Rural Referral Center RCC. At tentative cost settlement of the hospital's fiscal year

(with subsequent adjustment at final cost settlement, if applicable), the HHSC [~~department~~] or its designee determines what the amount of reimbursement during the fiscal year would have been if the HHSC [~~department~~] or its designee reimbursed the hospital under similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). This determination is made without imposing a TEFRA cap. If the amount of reimbursement under the TEFRA principles is greater than the amount of reimbursement received by the hospital under the prospective payment system, the HHSC [~~department~~] or its designee reimburses the difference to the hospital.

(r) (No change.)

(s) Reimbursement of inpatient direct graduate medical education (GME) costs. The Medicaid allowable inpatient direct graduate medical education cost, as specified under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, is calculated for each hospital having inpatient direct graduate medical education costs on its tentative or final audited cost report. Those inpatient direct medical education costs are removed from the calculation of the interim rate described in subsection (b)(7) of this section and not [~~are~~] used in the calculation of the provider's standard dollar amount described in subsection (c) of this section. Those allowable inpatient direct graduate medical education costs for services delivered to Medicaid eligible patients with inpatient admission dates on or after September 1, 1997, will be subject to the cost determination and settlement provisions as described in this subsection. No Medicaid inpatient direct graduate medical education cost settlement provisions are applied to inpatient hospital admissions prior to September 1, 1997. For cost reporting periods beginning on or after September 1, 2003, providers with Medicaid allowable direct graduate medical education costs as described in this subsection will receive a pro rata share of their annual GME cost based on appropriations or allocations from appropriations made specifically for this purpose. The amount and frequency of interim payments will also be subject to the availability of appropriations made specifically for this purpose. Interim payments are subject to settlement at both tentative and final audit of a provider's cost report. [~~Providers with Medicaid allowable inpatient direct graduate medical education costs as described in this subsection will receive an interim monthly payment based upon one-twelfth of their inpatient direct graduate medical education cost from their most recent tentative or final audited cost report. The interim payment amount as described in this subsection will not be updated during the state fiscal year to reflect new tentative or final cost report settlements. These payments are subject to settlement at both tentative and final audit of provider cost reporting periods covering the state fiscal year.~~]

(t) (No change.)

(u) In accordance with this subsection and subject to the availability of funds, a high volume adjustment factor will be included in the calculation of the state fiscal year 2003 (September 1, 2002 through August 31, 2003), state fiscal year 2004 (September 1, 2003 through August 31, 2004) and state fiscal year 2005 (September 1, 2004 through August 31, 2005) Standard Dollar Amount described in subsection (a)(4) of this section for eligible hospitals. For purposes of this subsection, payments made in state fiscal year 2004 [~~2003~~], prior to the effective date of this subsection, may be adjusted in accordance with the methodology set out in this subsection.

(1) - (2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
General Counsel
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1 TAC §355.8065

The Health and Human Services Commission (HHSC) proposes to amend §355.8065, concerning additional reimbursement to disproportionate share hospitals, in its Medicaid Reimbursement Rates chapter. The proposed amendment deletes language allowing the state to use a proxy to determine a hospital's cost of treating uninsured patients. It adds language to allow for the inclusion of third party reimbursement and Medicaid Upper Payment Limit funds to the calculation of Medicaid shortfall. It adds language allowing the state to offset a hospital's Medicaid reimbursement, in excess of its Medicaid costs, against its costs of treating uninsured patients.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that for the first five years the proposed rule is in effect, there will be no fiscal implications for state government as a result of administering the proposed rule. There will be no fiscal impact on local governments as a result of enforcing or administering the section.

Steve Lorenzen, Director of Rate Analysis, has determined that for each year of the first five years the proposed changes are in place, the public benefit anticipated as a result of enforcing this section will be improving the state's administration of the program, and keeping the program aligned with federal policy changes and recommendations. There is no anticipated impact on small businesses and micro-businesses to comply with the section as proposed as they will not be required to alter their business practices as a result of the section. There are no anticipated economic costs to persons who are required to comply with the proposed section. There is no anticipated impact on local employment.

HHSC has determined that this proposed rule is not a "major environmental rule" as defined by the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental factors that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined the proposed rule does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under §2007.043, Government Code.

Written comments on the proposal may be submitted to Scott Reasonover, Rate Analysis Department, Texas Health and Human Services Commission, 1100 West 49th Street, Austin,

Texas, 78756, within 30 days of the publication of this proposal in the *Texas Register*. In addition, a public hearing concerning the proposed rule will be held Wednesday, July 16, 2003 between 2 and 5 p.m. in Room 1410 of the Brown Heatley Building at 4900 North Lamar Boulevard, Austin, Texas. To comply with federal regulations, a copy of the proposed rule is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The amendment is proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursement.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531.

§355.8065. Additional Reimbursement to Disproportionate Share Hospitals.

(a) (No change.)

(b) Definitions. For purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Bad debt charges--Uncollectible inpatient and outpatient charges that result from the extension of credit. [~~Bad debt charges are used in the calculation of charges attributed to uninsured patients as defined in paragraph (5) of this subsection, and are used only in the limited circumstances described in subsection (f)(2)(E)(iv) of this section.~~]

(3) (No change.)

(4) Charity charges--Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a hospital fiscal year. These charges do not include bad debt charges, contractual allowances or discounts (other than for indigent patients not eligible for medical assistance under the approved Medicaid state plan); that is, reductions or discounts in charges given to other third party payers such as, but not limited to, health care maintenance organizations, Medicare, or Blue Cross. [~~Charity charges are used in the calculation of charges attributed to uninsured patients as defined in paragraph (5) of this subsection, only in the limited circumstances described in subsection (f)(2)(E)(iv) of this section.~~] The amount of total charity charges must be consistent with the amount reported on the Texas Department of Health's [~~(department)~~] annual hospital survey.

(5) - (10) (No change.)

(11) Hospital specific limit--The sum of the following two measurements:

(A) - (B) (No change.)

(C) When a hospital's cost of services (inpatient and outpatient) furnished to Medicaid patients is less than the amount paid to the hospital under the non-disproportionate share hospital payment method under the state plan, and from third party payments made on behalf of Medicaid recipients, the state will reduce the hospital specific limit by the difference.

(12) - (15) (No change.)

(16) Medicaid shortfall--The cost of services (inpatient and outpatient) furnished to Medicaid patients, less the amount paid under the non-disproportionate share hospital payment method under the state plan, and third party payments made on behalf of Medicaid recipients.

(17) - (31) (No change.)

(c) - (e) (No change.)

(f) Reimbursing Medicaid disproportionate share hospitals. The commission shall reimburse Medicaid disproportionate share hospitals on a monthly basis. Monthly payments will equal one twelfth of annual payments unless it is necessary to adjust the amount because payments will not be made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. Before the start of the next state fiscal year, the commission determines the size of the available funds to reimburse disproportionate share hospitals for the next state fiscal year, which begins each September 1. The funds available to reimburse the state chest hospitals and state mental hospitals equal the total of their adjusted hospital specific limits. The available fund for the remaining hospitals equals the lesser of the funds remaining in the state's annual disproportionate share hospital allotment or the sum of qualifying hospitals' adjusted hospital specific limits. Payments shall be made in the following manner, unless the commission determines the hospital's proposed reimbursement has exceeded its specific limit.

(1) (No change.)

(2) For the remaining hospitals, payments will be made based on both weighted inpatient Medicaid days and weighted low income days. The commission weighs each hospital's total inpatient Medicaid days and low income days by the appropriate weighting factor. The commission defines a low income day as a day derived by multiplying a hospital's total inpatient census days from its fiscal year ending in the previous calendar year by its low income utilization rate. Hospital districts and city/county hospitals with greater than 250 licensed beds in the state's largest MSAs shall receive weights based proportionally on the MSA population according to the most recent decennial census. MSAs with populations greater than or equal to 150,000, according to the most recent decennial census, are considered as the "largest MSAs." Children's hospitals also shall receive weights because of the special nature of the services they provide. All other hospitals receive weighting factors of 1.0. The inpatient Medicaid days of each hospital shall be based on the latest available state fiscal year data for patients entitled to Title XIX benefits. The available fund shall be divided into two parts. One half of the available fund will reimburse each qualifying hospital on a monthly basis by its percent of the total inpatient Medicaid days. One-half of the available funds will reimburse each qualifying hospital by its percent of the total low income days. The commission determines whether hospitals in rural areas will receive 5.5% or more of the gross disproportionate share hospital funds for non-state hospitals. If hospitals in rural areas will receive at least 5.5% of the gross non-state hospitals funds, the commission will reimburse them using existing principles. If hospitals in rural areas will not receive at least 5.5% of gross non-state hospital funds, the commission will reimburse them at 5.5% of non-state hospital funds, using existing principles. Reimbursement for the remaining hospitals is determined as follows.

(A) - (C) (No change.)

(D) For state fiscal year 2004 (September 1, 2003 through August 31, 2004) and state fiscal year 2005 (September 1, 2004 through August 31, 2005) [~~2003 (September 1, 2002 through August 31, 2003)~~], the monthly disproportionate share payment

calculated under subparagraph (C) of this paragraph is subject to a conversion factor that is applied as follows:

(i) (No change.)

(ii) A conversion factor of 1.163881 is applied to payments made to hospital districts [~~and city hospitals~~] located in MSAs with populations between 1 and 3 million.

(iii) - (vi) (No change.)

(E) The commission or its designee determines the hospital specific limit for each disproportionate share hospital. This limit is the sum of a hospital's Medicaid shortfall, as defined in subsection (b)(16) of this section, and its cost of services to uninsured patients, as defined in subsection (b)(5) of this section, multiplied by the appropriate inflation update factor, as provided for in subsection (g)(2)(E) of this section.

(i) - (iii) (No change.)

~~*f(iv)* Hospitals that do not respond to the survey, or that are unable to determine accurately the charges attributed to patients without insurance, shall have their bad debt charges as defined in subsection (b)(2) of this section, and their charity charges as defined in subsection (b)(4) of this section, reduced by a percentage derived from a representative sample of hospitals to be determined annually by the commission or its designee. The commission or its designee derives the percentages using the following formula: for each specific category of hospitals listed in clause (v) of this subparagraph, the commission or its designee sums the total amount of charges for patients without health insurance or other third party payments. For each specific category of hospitals listed in clause (v) of this subparagraph, the commission or its designee sums the charity and bad debt charges. For each specific category of hospitals listed in clause (v) of this subparagraph, the department then divides the charges for patients without health insurance or other third party payments by the sum of charity and bad debt charges. The commission or its designee then uses the resulting ratio for each specific category of hospitals listed in clause (v) of this subparagraph in the following manner. Individual hospitals that do not respond to the survey, or that are unable to accurately determine the charges attributed to patients without insurance have their hospital's individual sum of bad debt and charity charges multiplied by the appropriate ratio for the specific hospital category. After the commission or its designee has calculated a value for the patients without health insurance or other source of third party payment for each individual hospital, the commission or its designee multiplies each hospital's calculated value by that hospital's cost-to-charge ratio (inpatient and outpatient) to obtain the proxy cost of services delivered to uninsured patients at each hospital.]~~

~~*f(v)* The representative sample of hospitals is one of the following specific categories of hospitals: urban public, other urban, rural, state-operated psychiatric and non psychiatric. In the event that less than 20 % of the hospitals in a specific category provide data to the commission or its designee, the commission or its designee uses the overall ratio calculated from all responding hospitals. The commission or its designee creates additional categories, by submitting a state plan amendment, as it deems appropriate for the economic and efficient operation of the Medicaid disproportionate share program.]~~

(iv) [~~(vi)~~] After the commission or its designee determines each disproportionate share hospital's cost of services to patients who have no health insurance or source of third party payments for services provided during the year, the commission or its designee subtracts from each hospital's cost of services the amount of payments made by or on behalf of those patients who have no health insurance or source of third party payments for services provided during the year.

(F) - (I) (No change.)

(g) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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1 TAC §355.8067

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 355, Medicaid Reimbursement Rate. Chapter 355 describes the reimbursement methodology of the Texas medical assistance (Medicaid) program. HHSC proposes to amend §355.8067, concerning disproportionate share reimbursement methodology, in its Medicaid Reimbursement Rates chapter. The proposed amendment deletes language that will simplify the state's administration of the program. It adds language to allow for the inclusion of third party reimbursement to the calculation of Medicaid shortfall. It adds language allowing the state to offset a hospital's Medicaid reimbursement, in excess of its Medicaid costs, against its costs of treating uninsured patients.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that for the first five years the proposed rule is in effect, there will be no fiscal implications for state government as a result of administering the proposed rule. There will be no fiscal impact on local governments as a result of enforcing or administering the section.

Steve Lorenzen, Director of Rate Analysis, has determined that for each year of the first five years the proposed changes are in place, the public benefit anticipated as a result of enforcing this section will be improving the state's administration of the program, and keeping the program aligned with federal policy changes and recommendations. There is no anticipated impact on small businesses and micro-businesses to comply with the section as proposed as they will not be required to alter their business practices as a result of the section. There are no anticipated economic costs to persons who are required to comply with the proposed section. There is no anticipated impact on local employment. HHSC has determined that this proposed rule is not a "major environmental rule" as defined by the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental factors that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined the proposed rule does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under Section 2007.043, Government Code.

Written comments on the proposal may be submitted to Mr. Scott Reasonover, Rate Analysis Department, Texas Health and Human Services Commission, 1100 West 49th St., Austin, Texas, 78756, within 30 days of the publication of this proposal in the *Texas Register*. In addition, a public hearing concerning the proposed rule will be held Wednesday, July 16, 2003 between 2 and 5 p.m. in Room 1410 of the Brown Heatley Building at 4900 North Lamar Boulevard, Austin, Texas. To comply with federal regulations, a copy of the proposed rule is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The rule is proposed under the Texas Government Code, 531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, 32.021, and the Texas Government Code, 531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; the Texas Government Code, 531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursement; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531.

§355.8067. Disproportionate Share Hospital Reimbursement Methodology.

(a) A hospital owned and operated by a state university or other agency of the state is eligible for disproportionate share reimbursement. A state-owned teaching hospital is a hospital owned and operated by a state university or other agency of the state.

(b) Each hospital must have a Medicaid inpatient utilization rate defined at a minimum of 1.0%

(c) To qualify for disproportionate share payments, each hospital must have at least two physicians (M.D. or D.O.), with staff privileges at the hospital, who have agreed to provide nonemergency obstetrical services to Medicaid clients. The two-physician requirement does not apply to hospitals whose inpatients are predominantly under 18 years old or that did not offer nonemergency obstetrical services to the general population as of December 22, 1987.

(d) For purposes of this section, the following words and terms, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Total Medicaid inpatient days--Total Medicaid inpatient days means the total number of billed Title XIX inpatient days based on the latest available state fiscal year data for patients eligible for Title XIX benefits. Total Medicaid inpatient days includes days that were denied payment for reasons other than eligibility. Included are inpatient days of care provided to patients eligible for Medicaid at the time the service was provided, regardless of whether the claim was paid. These denied claims include, but are not limited to, claims for patients whose spell of illness limits are exhausted, or claims that were filed late. The term excludes days attributable to Medicaid patients between the ages of 21 and 65 who live in an institution for mental diseases. The term includes days attributable to individuals eligible for Medicaid in other states.

(2) Total inpatient census days--Total inpatient census days means the total number of a hospital's inpatient census days during its fiscal year ending in the previous calendar year.

(3) Cost of services--Cost of services to uninsured patients is the inpatient and outpatient charges to patients who have no health insurance or other source of third party payment for services provided during the year, multiplied by the hospital's ratio of costs to charges (inpatient and outpatient), less the amount of payments made by or on behalf of those patients. Uninsured patients are patients who have no health insurance or other source of third party payments for services provided during the year. Uninsured patients include those patients who do not possess health insurance that would apply to the service for which the individual sought treatment. [~~Cost of services does not include any bad debt charges.~~]

(4) Hospital specific limit--Hospital specific limit is the sum of the following two measurements: Medicaid shortfall and costs of services to uninsured patients. When a hospital's cost of services (inpatient and outpatient) furnished to Medicaid patients is less than the amount paid to the hospital under the non-disproportionate share hospital payment method under the state plan, and from third party payments made on behalf of Medicaid recipients, the state will reduce the hospital specific limit by the difference.

(5) Medicaid shortfall--Medicaid shortfall is the cost of services (inpatient and outpatient) furnished to Medicaid patients, less the amount paid under the non-disproportionate share hospital payment method under this state plan, and third party payments made on behalf of Medicaid recipients.

(6) Cost-to-charge ratio (inpatient and outpatient)--Cost-to-charge ratio is the hospital's overall cost-to-charge ratio, as determined from its Medicare cost report submitted for the fiscal year ending in the previous calendar year. The latest available Medicare cost report is used in the absence of the cost report for the hospital's fiscal year ending in the previous calendar year.

(7) Adjusted hospital specific limit--Adjusted hospital specific limit is a hospital specific limit trended forward to account for the inflation update factor since the base year.

(8) Inflation update factor--Inflation update factor is a general increase in prices as determined by the department.

(9) Medicaid inpatient utilization rate--Medicaid inpatient utilization rate is the fraction expressed as a percentage, the numerator of which is the hospital's number of inpatient days attributable to patients who (for these days) were eligible for medical assistance under a state plan, and the denominator of which is the total number of the hospital's inpatient days in that period. The term "inpatient day" includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

(10) Payments received--Payments received from uninsured patients are those payments received from or on behalf of uninsured patients as defined in paragraph (3) of this subsection.

(11) Charity charges--Charity charges are the total amount of hospital charges for inpatient and outpatient services attributed to charity care in a cost reporting period. [~~, as reported on the state teaching hospitals' annual financial reports, for use only in the calculation of the disproportionate share hospital payment under subsection (e)(1) of this section.~~]

(12) Allowable cost--Allowable cost is defined by the department using the rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers when providing services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(13) Available fund--The available fund for state teaching hospitals is the total amount of funds that may be reimbursed to the state teaching hospitals as determined below.

(e) The department reimburses state-owned teaching hospitals on a monthly basis from the available fund for state teaching hospitals. Monthly payments equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments are not made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. Prior to the start of the next federal fiscal year, the department determines the size of the fund to reimburse state-owned teaching hospitals for the next federal fiscal year. The available fund to reimburse the state teaching hospitals equals the total of their disproportionate share hospital payments, as follows: a state-owned teaching hospital that meets the requirements for disproportionate share status receives annually 100 percent of its adjusted hospital specific limit.

~~[(1) A state teaching hospital will receive a monthly disproportionate share payment based on the following formula: Monthly Charity Charges of the State-Owned Teaching Hospital Divided by Total Monthly Charity Charges of All State-Owned Teaching Hospitals x Available Fund.]~~

~~[(2) If the adjusted hospital specific limit for a state teaching hospital is less than the formula in paragraph (1) of this subsection, a state teaching hospital will receive 100% of its adjusted hospital specific limit, instead of the amount determined under this subsection.]~~

(f) The department or its designee determines the hospital specific limit for each disproportionate share hospital. This limit is the sum of a hospital's Medicaid shortfall, as defined in subsection (d)(5) of this section, and its cost of services to uninsured patients as defined in subsection (d)(3) of this section, multiplied by the appropriate inflation update factor, as provided for in subsection (g) of this section.

(1) The Medicaid shortfall includes total Medicaid billed charges and any Medicaid payments made for the corresponding inpatient and outpatient services delivered to Texas Medicaid clients, as determined from the hospital's fiscal year claims data, regardless of whether the claim was paid. These denied claims include, but are not limited to, patients whose spell of illness claims were exhausted, or payments were denied due to late filing. Refer to subsection (d)(5) of this section.

(A) The total billed Medicaid charges for each hospital are converted to cost, utilizing a calculated cost-to-charge ratio (inpatient and outpatient). The department or its designee determines that ratio by using the hospital's HCFA 2552-92, Hospital and Hospital Health Care Complex Cost Report, that was submitted for the fiscal year ending in the previous calendar year. The department or its designee uses the latest available Medicare cost report in the absence of the Medicare cost report submitted in the fiscal year ending in the previous calendar year. To determine the cost-to-charge ratio (inpatient and outpatient) for each hospital, the department or its designee uses the total cost from the HCFA 2552-92, Worksheet B, Part 1, Column 25, and total charges from the HCFA 2552-92, Worksheet C, Part 1, Column 6. The ratio is the total cost divided by the total gross patient charges.

(B) The department or its designee determines the cost of services to patients who have no health insurance or source of third party payments for services provided during the year for each hospital. Hospitals are surveyed each year to determine charges that can be attributed to patients without insurance or other third party resources. The charges are multiplied by each hospital's cost-to-charge ratio (inpatient and outpatient) to determine the cost.

(2) After the department or its designee determines each disproportionate share hospital's cost of services to patients who have no health insurance or source of third party payments for services provided during the year, the department subtracts from each hospital's cost of services the amount of payments made by or on behalf of those patients who have no health insurance or source of third party payments for services provided during the year.

(g) The department or its designee trends each hospital's "hospital specific limit" calculated from its historical base period cost report from subsection (f) of this section to the state's fiscal year disproportionate share program. For hospitals without full 12-month fiscal year cost reports, the department or its designee annualizes the cost to calculate the hospital specific limit. The department or its designee uses the inflation update factor, as defined in subsection (d)(8) of this section, in calculating the adjusted hospital specific limit. The department or its designee calculates the number of months from the mid-point of the hospital's cost reporting period to the mid-point of the state fiscal year disproportionate share program. The department or its designee then multiplies the portion of the hospital's cost report year occurring in the state fiscal year by the inflation update factor used for each state fiscal year in the calculation of hospital reimbursement rates for each state fiscal year. The product of these calculations is multiplied by each hospital's hospital specific limit to obtain each hospital's adjusted hospital specific limit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
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SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 355, Medicaid Reimbursement Rates. Chapter 355 describes the reimbursement methodology of the Texas medical assistance (Medicaid) program. HHSC proposes amendments to §355.8085, concerning Texas Medicaid Reimbursement Methodology (TMRM); amendments to §355.8081, concerning Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, and Psychologists' Services; the addition of new rule §355.8600, concerning Reimbursement for Ambulance Services, and the addition of new rule §355.8610, concerning Reimbursement for Clinical Laboratory Services, all in its Medicaid Reimbursement Rates chapter. The purpose of the revisions and additions is to transfer reimbursement methodologies for ambulance and clinical diagnostic laboratory services that do not follow TMRM out of the TMRM rule into new rules of their own. Since the TMRM applies only to covered services provided by physicians and certain other practitioners, the title of the rule is being changed to TMRM for Physicians and Certain Other Practitioners. The proposal also updates TMRM by replacing references to the

"Texas Department of Health" and "department" with references to "HHSC and/or its designee". The proposal provides HHSC with more flexibility in making inflation adjustments to the TMRM conversion factor. The new rule at §355.8610, concerning Reimbursement for Clinical Laboratory Services, allows HHSC more flexibility in reviewing, determining and updating these fees by removing the requirement that the fees be based solely on the Medicare-established fee schedule, by changing the required period for review to at least every two years, and by adding the requirement that fees must be established within available funding and not exceed the Medicare fee schedule. Revisions to §355.8085 and §355.8600 add the requirement that fees must be established within available funding. The revisions to §355.8081 update rule citations for TMRM for Physicians and Certain Other Practitioners at §355.8085, for ambulance services at §355.8600, and for clinical laboratory services at §355.8610.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendments and new sections are in effect, there are fiscal implications for state government as a result of enforcing or administering the sections. There are no fiscal implications for local governments as a result of enforcing or administering the sections.

The effect on state government for the first five-year period the sections are in effect is an estimated cost savings of $252,387 in fiscal year (FY) 2004; $248,581 in FY 2005; $248,581 in FY 2006; $248,581 in FY 2007; and $248,581 in FY 2008.

Steve Lorenzen, Director of Rate Analysis, has determined that during the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections is increased provider understanding of the various affected reimbursement methodologies. There is no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Nancy Kimble (telephone: 512-338-6496; FAX: 512-338-6544) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Ms. Kimble via facsimile or mail to HHSC Rate Analysis, Mail Code H-410, 1100 West 49th Street, Austin, TX 78756-3101, within 30 days of publication in the *Texas Register*.

A public hearing is scheduled for Wednesday, July 16, 2003, from 2:00 pm until 5:00 pm. The hearing will be held in the Public Hearing Room, of the Brown-Heatly State Office Building, 4900 North Lamar Boulevard, Austin, Texas 78756-3101.

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8081, §355.8085

The amendments are proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties; §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Government Code, §2001.006, which allows state agencies to adopt rule in preparation for the implementation of legislation.

The amendments implement the Government Code, §§531.033 and 531.021(b).

§355.8081. Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, and Psychologists' Services.

(a) Subject to qualifications, limitations, and exclusions as provided in this chapter, payment to eligible providers must not exceed the lesser of the provider's billed amount or the amount derived from the methodology described in §355.8085 [~~§29.1104~~] of this title (relating to Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners).

(b) Reimbursement for ambulance services is described in §355.8600 of this title (relating to Ambulance Services). Reimbursement for clinical laboratory services is described in §355.8610 of this title (relating to Clinical Laboratory Services).

§355.8085. Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners.

[~~(a)~~] Reimbursement for physicians and certain other practitioners.

(1) Introduction. Except as otherwise specified, the TMRM for covered services provided by physicians and certain other practitioners shall employ a prospective payment system [~~which shall be~~] based upon the [~~Texas Department of Health's (department's)~~] determination of adequacy of access to health care services by the Texas Health and Human Services Commission (HHSC) or its designee as described in this section[~~, or the actual resources required by an economically efficient provider to provide each individual service~~].

(A) There shall be no geographical or specialty reimbursement differential for individual services.

(B) The fees for individual services will be reviewed at least every two years and will be based upon either:

(i) historical payments, with adjustments, to ensure adequate access to appropriate health care services; or

(ii) actual resources required by an economically efficient provider to provide each individual service.

(C) The fees for individual services or adjustments thereto must be made within available funding.

(2) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Access-based reimbursement fees (ABRF)--Fees for individual services based upon historical payments adjusted, where HHSC or its designee [~~the department~~] deems necessary, to account for deficiencies relating to the adequacy of access to health care services as defined in subparagraph (B) of this paragraph.

(B) Adequacy of access--Measures of adequacy of access to health care services include, but are not limited to, the following determinations:

(i) adequate participation in the Medicaid program by physicians and other practitioners; and/or

(ii) the ability of the eligible Medicaid population to receive adequate health care services in an appropriate setting.

(C) Resource-based reimbursement fees (RBRF)--Fees for individual services based upon the [~~department's~~] determination by HHSC or its designee of the resources required by an economically efficient provider to provide individual services. An RBRF is defined mathematically by the following formula: RBRF1 = (RVUw-1 + RVUo-1 + RVUm-1) * CF where, RBRF1 = Resource-Based Reimbursement Fee for Service 1, RVUw-1 = Relative Value Unit for Work for Service 1, RVUo-1 = Relative Value Unit for Overhead for Service 1, RVUm-1 = Relative Value Unit for Malpractice for Service 1, and CF = Conversion Factor.

(D) Conversion factor--The dollar amount by which the sum of the three cost component RVUs is multiplied in order to obtain a reimbursement fee for each individual service. The initial value of the conversion factor is $26.873 for fiscal years 1992 and 1993. The [~~If funding is available, the~~] conversion factor will be reviewed at the beginning of each state fiscal year biennium, with any adjustments made within available funding and [~~updated~~] based on the adjustments described in subparagraph (E) of this paragraph or such other percentage approved by HHSC or its designee or its designee may [~~the Health and Human Services Commission (HHSC) at the beginning of each state fiscal year biennium. The department may, with the approval of HHSC,~~] develop and apply multiple conversion factors for various classes of service such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(E) Conversion factor adjustments--If funding is available and adjustments are made to the conversion factor(s), the adjustments include inflation and/or access-based adjustments [~~The biennium adjustment of the conversion factor is composed of the following two components~~].

(i) Inflation adjustment--To account for general inflation, the conversion factor is adjusted by [~~one-half of~~] the forecasted rate of change of a specific inflation factor appropriate to physician or other professional services covered by the TMRM, the [~~implicit price deflator-personal consumption expenditures (IPD-DCE)~~] Personal Consumption Expenditures (PCE) chain-type price index, or some percentage thereof. To inflate the conversion factor for the prospective period, HHSC or its designee [~~the department~~] uses the lowest feasible inflation factor [~~IPD-PCE~~] forecast consistent with the forecasts of nationally recognized sources available to HHSC or its designee [~~the department~~] at the time of preparation of the conversion factor(s).

(ii) Access-based adjustment--Adjustments to the conversion factor may also be made to ensure adequacy of access as defined in subparagraph (B) of this paragraph.

(F) Relative units (RVUs)--The relative value assigned to each of the three individual components that [~~which~~] comprise the cost of providing individual Medicaid services. The three cost components of each reimbursement fee are intended to reflect the work, overhead, and professional liability expense required to provide each individual service. The RVUs that are employed in the TMRM must, except as otherwise specified, be based upon the RVUs of the individual services as specified in the Medicare Fee Schedule. HHSC or its designee [~~The department~~] will review any changes to or revisions of the various Medicare RVUs and, if applicable, adopt [~~the department adopts~~] the changes as part of the TMRM, within available funding.

(3) Calculating the payment amounts. The fee schedule that results from the TMRM must be composed of two separate components:

(A) the access-based fees; and

(B) the resource-based fees [~~which must be~~] composed of RVUs for the work, overhead, and malpractice components. The sum of these components must then be multiplied by the conversion factor to produce a reimbursement fee for each individual service.

[~~(b) Reimbursement for ambulance services. Ambulance services shall be reimbursed in accordance with a reasonable charge methodology. The department or its designee shall define and determine reasonable charges and payments based on reasonable charges as follows.~~]

[~~(1) A reasonable charge shall be a charge for a specific service shall be the lowest of:~~]

[~~(A) the provider's customary charge for that service;~~]

[~~(B) the prevailing charges made for similar services in the geographic locality; or~~]

[~~(C) the actual charge of the eligible provider.~~]

[~~(2) The department or its designee shall use a statistical base for making reasonable charge determinations. The statistical base is comprised of individual charges gathered from available sources, including Medicare (Title XVIII) and Medicaid (Title XIX).~~]

[~~(3) Determination of reasonable charges, as set forth in this section and established by the department, shall be made in accordance with applicable federal requirements. Payments for services provided must not exceed the Medicare allowable charges.~~]

[~~(c) Reimbursement for clinical diagnostic laboratory services. Clinical diagnostic laboratory tests performed in a physician's office, by an independent laboratory, or by a hospital laboratory for its outpatients shall be reimbursed on the basis of the Medicare-established fee schedule.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
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DIVISION 31. AMBULANCE SERVICES

1 TAC §355.8600

The new rule is proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties; §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Government Code, §2001.006, which allows state agencies to adopt rule in preparation for the implementation of legislation.

The new rule implements the Government Code, §§531.033 and 531.021(b).

§355.8600. Reimbursement for Ambulance Services.

Ambulance services shall be reimbursed in accordance with a reasonable charge methodology. The Texas Health and Human Services Commission (HHSC) or its designee shall define and determine reasonable

charges and payments as follows, with all determinations and adjustments to those determinations made within available funding.

(1) A reasonable charge for a specific service shall be the lowest of:

(A) the provider's customary charge for that service;

(B) the prevailing charges made for similar services in the geographic locality; or

(C) the actual charge of the eligible provider.

(2) HHSC or its designee shall use a statistical base for making reasonable charge determinations. The statistical base is comprised of individual charges gathered from available sources, including Medicare (Title XVIII) and Medicaid (Title XIX).

(3) Determination of reasonable charges, as set forth in this section and established by HHSC or its designee, shall be made in accordance with applicable federal requirements. Payments for services provided must not exceed the Medicare fee schedule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 32. CLINICAL LABORATORY SERVICES

1 TAC §355.8610

The new rule is proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties; §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Government Code, §2001.006, which allows state agencies to adopt rule in preparation for the implementation of legislation.

The new rule implements the Government Code, §§531.033 and 531.021(b).

§355.8610. Reimbursement for Clinical Laboratory Services.

Clinical diagnostic laboratory tests performed in a physician's office, by an independent laboratory, or by a hospital laboratory for its outpatients shall be reimbursed the lower of the provider's usual customary charge for that service or a maximum fee determined by the Texas Health and Human Services Commission (HHSC) or its designee. HHSC or its designee will review maximum fees at least every two years, with any adjustments made within available funding. Payments for services provided must not exceed the Medicare fee schedule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 17. LONESTAR SELECT CONTRACTING PROGRAM

1 TAC §355.8321

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 355, Medicaid Reimbursement Rate. Chapter 355 describes the reimbursement methodology of the Texas medical assistance (Medicaid) program. HHSC proposes to amend §§355.8321, concerning the LoneSTAR Select Contracting Program, in its Medicaid Reimbursement Rates chapter. Section 355.8321 is being amended to require health care providers to apply for selective contracting provider agreements on an individual basis.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that for the first five years the proposed rule is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal impact on local governments as a result of enforcing or administering the section.

Steve Lorenzen, Director of Rate Analysis, has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be to clarify selective contracting requirements. There is no anticipated impact on small businesses and micro-businesses to comply with the section as proposed as they will not be required to alter their business practices as a result of the section. There are no anticipated economic costs to persons who are required to comply with the proposed section. There is no anticipated impact on local employment.

HHSC has determined that this proposed rule is not "a major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that this proposed rule does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under §2007.043, Government Code.

Written comments on the proposal may be submitted to Mr. Doug Odle, Rate Analysis Department, Texas Health and Human Services Commission, 1100 W. 49th Street, Austin, Texas 78756, within 30 days of publication of this proposal in the *Texas Register*. In addition, a public hearing concerning the proposed rule will be held Wednesday, July 16, 2003, from 2:00 p.m. until 5:00 p.m. The hearing will be held in room 1410

at the Brown-Heatly Building, 4900 N. Lamar Blvd., Austin, Texas 78751. To comply with federal regulations, a copy of the proposed rule is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The amendments are proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties; §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation

The proposed rule affects the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531.

§355.8321. LoneSTAR Select Contracting Process for Inpatient Hospital Services.

(a) Introduction. This section implements the provisions of Senate Bill 79, 73rd Texas Legislature, 1993, mandating selective contracting for non-emergency inpatient hospital services.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Market area--A geographic subdivision of the State of Texas defined as a group of geographically contiguous counties in which the Texas Department of Health (department) determines that health care providers will be invited to apply for selective contracting agreements. In general, each Metropolitan Statistical Area (MSA) in the State will be considered for designation as a market area. Where warranted by historical patient migration patterns, the department may designate certain non-MSA counties that are geographically contiguous to an MSA to be included with MSA counties within a market area.

(2) Effective service area--For each health care provider in a market area, the geographic area, as defined on a zip code basis, in which the health care provider has historically provided inpatient hospital services to Medicaid patients. For purposes of subsections (f) and (g) of this section, the effective service area will be determined based on historical Medicaid inpatient claims data.

(3) Executive Oversight Committee--The executive committee established by the department to direct the selective contracting initiative.

(4) Hospital capacity to provide specialized service offerings--

(A) For the LoneSTAR Select Contracting Program I, the presence or absence of specific acute care hospital services, including, but not limited to, trauma centers, burn units, neonatal intensive care unit services, and psychiatric services, that are required to be available in the market to ensure adequate access to quality care.

(B) For the LoneSTAR Select Contracting Program II, the presence or absence of specific inpatient psychiatric services, including, but not limited to, separate units for young children and adolescents, separate psychiatric and substance abuse treatment services, closed and open units, and distinct programs (e.g., dual diagnosis, eating disorder) that may be required to be available in the market to ensure adequate access to quality.

(5) New facility--A health care provider facility substantially constructed after the time the department determined the network of health care providers that would be contracted under selective provider agreements. Such term shall not include facilities that were built and operational at the time the department determined the network of selective providers for the affected market area; regardless of whether the facility's corporate structure and/or name have changed due to merger, acquisition, or other corporate reorganization.

(6) Potential network--Any combination of applicant health care providers (whether the result of a joint proposal or determined by the department) that offer a:

(A) combined effective service area that provides geographic coverage of the market area to the same extent that coverage is provided under current practice;

(B) combined service capacity equal to at least:

(i) 115% of the most recently available historic service volume experience for the market area for the LoneSTAR Select Contracting Program I; or

(ii) 125% of the most recently available historic service volume experience for the market area for the LoneSTAR Select Contracting Program II; and

(C) combination of specialized services available within the market area that is at least as broad as the range of specialized services presently available to Medicaid recipients in that market area.

(7) Selective contracting--A method of contracting, granted through waivers of certain provisions of the Social Security Act, that allows the department to contract selectively with health care providers for non-emergency inpatient services, thereby improving its ability to act as a prudent purchaser of services and to manage the Medical Assistance Program in a more effective and efficient manner, as required by Senate Bill 79.

(8) Selective provider agreement--An agreement which includes an amendment to a health care provider's existing provider agreement with the department and involves selective contracting.

(9) Disproportionate share hospital--A health care provider participating in the Medicaid program that, according to state Medicaid criteria, meets the conditions of participation and serves a disproportionate share of indigent patients. Additional requirements for disproportionate share hospitals are specified in §29.609 of this title (relating to Additional Reimbursement to Disproportionate Share Hospitals) and §29.610 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology for State-Owned Teaching Hospitals).

(10) Health care provider--

(A) any acute care hospital that is eligible to provide inpatient hospital services to Medicaid recipients; or

(B) any inpatient mental health facility, as defined within this section.

(11) Optional volume management activities--Those activities that acute care hospitals may propose to furnish to Medicaid recipients in a market area to expand access to primary care services and ensure more appropriate use of acute care hospital facilities. Such activities may include, but not be limited to, furnishing ambulatory primary care clinic services to Medicaid recipients, and furnishing nurse hotlines which Medicaid recipients may call to receive professional advice about the most appropriate means to obtain medical care.

(12) Hardship exemption procedure--A method for non-contracted health care providers to obtain prior authorization from the department to provide non-emergency inpatient services to Medicaid recipients who would experience an unreasonable travel burden under the LoneSTAR Select Contracting Program(s).

(13) Emergency inpatient services--An admission into a health care provider with a diagnosis meeting the definition of a medical emergency.

(14) Non-emergency inpatient services--An admission into a health care provider with a diagnosis not meeting the definition of a medical emergency.

(15) LoneSTAR Select Contracting Program I--The selective contracting program designed and implemented for acute care hospitals.

(16) LoneSTAR Select Contracting Program II--The selective contracting program designed and implemented for inpatient mental health facilities as defined in the Health and Safety Code, §571.003.

(17) Inpatient mental health facility--A mental health facility that can provide 24-hour residential and acute inpatient psychiatric services that is:

(A) a facility operated by the Texas Department of Mental Health and Mental Retardation;

(B) a private mental hospital licensed by the department;

(C) a community center;

(D) a facility operated by a community center or other entity the Texas Department of Mental Health and Mental Retardation designates to provide mental health services;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the department; or

(F) a hospital operated by a federal agency.

(c) General Design. The department shall select that subset of market area that appears to indicate the most effective competition for selective provider agreements to serve Medicaid patients. The market areas shall be divided into one or more groups of solicitations that will avoid an overlap of contract evaluation and negotiation of solicitations.

(1) The department shall implement selective contracting by executing amendments to each health care provider's existing provider agreement with the department. Health care providers that were not parties to provider agreements before implementation of the department's selective contracting are eligible to apply; however, they must enter into a provider agreement that ensures they are subject to all terms and conditions of the Medical Assistance Program. The amendments to the provider agreements, and the process by which the department solicited, evaluated, negotiated, and executed the amended agreements with health care providers under selective contracting are not subject to the laws and regulations governing acquisition of goods and services by state agencies.

(2) Health care providers shall be required to apply for selective provider agreements on an individual basis. [~~Proposals by combinations of health care providers under common ownership in a market area shall be considered as individual proposals if the health care providers elect to apply on that basis. Proposals by combinations of health care providers in a market area that are not under common ownership will also be considered, provided that each health care provider that is a party to a joint application in a market area also submits an independent application for a selective contracting agreement in the market area; and each such health care provider provides written assurances that the terms of its individual proposal were arrived at independently without any other health care provider or combination of health care providers, and have not been communicated to any competitor or groups of competitors. The department does not intend any action by the State of Texas in the contracting process to require or sanction any form of communication or joint action by competitors in the market for inpatient hospital services (with respect to either individual or joint applications) that fails to comply with the provisions of this section.~~]

(3) The department shall send solicitation packages, inviting proposals for selective provider agreements, to each health care provider serving residents of the counties selected for participation. Health care providers will be required at all times to be eligible to participate in the Medicare and Medicaid programs. Health care providers that are not sent solicitation packages for Medicaid recipients of a particular market will be able to request a package after demonstrating their intent to offer services to Medicaid recipients in those markets.

(d) Proposals for selective provider agreements. Health care providers seeking selective provider agreements shall be required to submit the following information in their proposals:

(1) a schedule of proposed payment rates to be applied to all covered health care provider inpatient services during the term of the agreement;

(2) a proposed level of volume of services to Medicaid recipients that the health care provider would agree to serve during the contract period (this proposed level shall serve only as an estimate of services to assist the department in evaluating the availability of services within the relevant market area; it shall not serve as a limit on the amount of reimbursable services to be supplied by a contracting hospital);

(3) data to assist the department in evaluating the effective service area and specialized service offerings of the health care provider;

(4) assurances and certifications required to ensure health care provider compliance with the requirements of federal and Texas law and regulations, and the requirements of the department's selective contracting process;

(5) a narrative description of the proposed plans (if any) of the acute care hospital to furnish optional volume management programs for Medicaid recipients; and

(6) evidence that the application of the health care provider constitutes a binding quotation authorized by the corporate governance of the health care provider.

(e) Evaluation of proposals for selective provider agreements for comprehensive market area selective contracting. The department shall evaluate health care provider proposals, except proposals from new facilities according to the following criteria.

(1) Health care provider proposals shall be due to the department within one month of the release of proposal packages. All health care provider materials submitted to the department during the proposal process, and materials developed by the department or its contractors during the course of evaluation and negotiation, shall be confidential until all agreements are executed for all market areas in the state.

(2) The department shall evaluate health care provider proposals on a market-by-market basis and determine a negotiation strategy to pursue in each market area following its evaluation of all market areas. Based on the application of pre-specified evaluation criteria for

each market area, the department shall prepare a recommended strategy for contracting in each market area. Each market area strategy shall be subject to approval by the Executive Oversight Committee established by the department.

(3) The department shall retain the option to make awards without negotiation. In some circumstances, the department may accept the proposals offered by every health care provider in the market area. In most cases, however, the department expects to enter into negotiations with those health care providers whose proposals, taken together, appear to represent the best combination of providers consistent with the overall objectives of the Medical Assistance Program. After negotiation, the department reserves the right not to award an agreement in a specific market area. In most cases, however, the department shall proceed to finalize and execute agreements with some subset of the health care providers in each market area. In that event, coverage restrictions associated with the use of non-contracted health care providers Medicaid recipients shall apply.

(f) Evaluation criteria and methodology for comprehensive market area selective contracting. The department's evaluation of proposals, except proposals from new facilities, for selective provider agreements for comprehensive coverage of each market area shall be conducted in two phases. Phase One shall include determining minimally acceptable network combinations and Phase Two shall include cost evaluation. A description of each phase follows.

(1) In Phase One, the department shall enter the information included in health care provider proposals in each market area into a personal computer based (PC-based) micro-simulation model designed to aid in the evaluation of the department's contracting options for each market. Data from health care provider proposals shall be combined with data from the department's eligibility systems and claims processing records to construct the data base required for this phase of the evaluation. Each health care provider's record in the data base shall contain information necessary to determine each health care provider's:

(A) effective service area for Medicaid recipients in that market area; and

(B) capacity to provide specialized services required by Medicaid recipients in the market area.

(2) The PC-based micro-simulation model shall be used to test all possible combinations of health care providers applying for selective provider agreements to determine potential networks that shall meet the department's requirements for access to services for Medicaid patients. [~~Where health care providers have submitted a joint proposal for selective provider agreements, the department shall evaluate the proposed provider network and the proposed network in all possible combinations with remaining health care providers that submitted proposals.~~]

(3) In Phase Two, each potential network shall be eligible for further consideration. If the Phase One evaluation fails to identify a potential network of applicant health care providers that meet the department's specified criteria, the department reserves the right to enter into direct negotiations with any health care provider serving the market area. The purpose of these negotiations shall be to develop a minimally acceptable potential network, and allow the department to initiate negotiations with a health care provider that failed to submit a proposal during the proposal period.

(4) In Phase Two, each potential network identified in a market area in Phase One shall be evaluated to determine the estimated reduction in program costs that would result from entering into selective provider agreements with all of the health care providers in that potential network, while excluding all other health care providers from serving non-emergency cases. The department shall use the PC-based micro-simulation model to produce an estimate of the total change in Medicaid program costs that would result by entering into agreements with those health care providers during the base contract period. The estimate by the department shall consider:

(A) changes in unit prices to be paid to providers for inpatient services;

(B) changes in the distribution of service volumes (and case mix) across health care providers that would result from the reallocation of service volume from non-selected to selected providers; and

(C) savings in Medicaid program costs likely to result from the changes in service volumes induced by optional volume management activities proposed by acute care hospitals, including both savings in aggregate acute care hospital service use and offsetting increases in non-hospital service costs.

(5) The result of the evaluation by the department will be a range of values for each potential network. The ranges shall be constructed using best case, worst case, and expected value assumptions about the distribution of service volumes across hospitals in the network.

(6) Following the evaluation, the department shall prepare a recommendation to the Executive Oversight Committee that includes the outcome of both phases of the evaluation for each market area, as well as a proposed strategy for the department to meet the best interests of the Medical Assistance Program. Department options shall include:

(A) making an award without negotiations--including an award at the proposed price schedules to all health care providers in the market;

(B) entering into negotiations with health care providers a single potential network to improve proposed pricing, if possible, and to finalize an agreement about key program features; or

(C) entering into negotiations with one or more health care providers influence the department's choice among multiple potential networks by lowering the pricing terms offered by individual health care providers. These negotiations may result in identifying a single potential network that would differ in its health care provider composition from potential networks initially identified in Phase One.

(g)-(j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 424-6576

CHAPTER 357. MEDICAL FAIR HEARINGS

1 TAC §§357.1, 357.3, 357.5 - 357.7, 357.11 - 357.13, 357.17, 357.21, 357.23, 357.25, 357.29

The Health and Human Services Commission (HHSC) proposes amendments to §357.1, Purpose and Scope; §357.3, Definitions; §357.5, Notice of Agency Action; §357.7, Maintaining Benefits or Services; §357.11, Preliminary Matters for a Standard Fair Hearing; §357.13, Location of Hearing and Accommodation; §357.17, Document Hearing; §357.21, Burden of Proof; §357.23, Procedural Rights of the Individual; §357.25, Dismissal of Hearing; and §357.29, Hearing Decisions. In addition, HHSC is proposing two new rules: §357.6, Notice of MCO Action and Resolution of MCO Appeals; and §357.12, Preliminary Matters for an Expedited Fair Hearing for Individuals Enrolled with an MCO.

The proposed amendments generally clarify language concerning standard state fair hearings and add new language concerning: a Medicaid Managed Care Organization's (MCO) responsibilities after taking an "action"; expedited appeals to an MCO; and expedited state fair hearings for individuals enrolled in an MCO. Proposed new §357.6, Notice of MCO Action and Resolution of MCO Appeals, clarifies that if an MCO takes an "action," an enrollee may file an appeal with the MCO and/or request a state fair hearing. Under the proposed rules, a managed care enrollee may request that the state fair hearing be expedited if the enrollee's health requires it. A state fair hearing must be expedited when the MCO determines or the provider indicates that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function.

For a standard-timeframe state fair hearing, an enrollee does not have to exhaust his or her appeal to the MCO before requesting a fair hearing. For an expedited fair hearing, however, the MCO must first resolve the appeal before the enrollee may request a fair hearing. Proposed new §357.6 also sets forth the MCO notice-of-action requirements; the criteria for an expedited appeal to the MCO; timeframes for resolutions by the MCO of an appeal; notice of appeal resolution requirements; and timeframes for requesting a standard or expedited state fair hearing following an MCO action. A definition of an MCO "action" is added to §357.3, along with definitions for "standard fair hearings" and "expedited fair hearings"; "MCO"; and "MCO appeals."

A proposed amendment to §357.1 adds "action by an MCO" as a basis for requesting a state fair hearing. Proposed new §357.12 addresses notification to an enrollee of an expedited fair hearing and the enrollee's access to records and right to representation at the hearing. Additional non-substantive changes are proposed for clarification, ease of understanding, and internal consistency. These changes include formatting and, in some cases, paragraph restructuring, and affect §§357.5, 357.7, 357.11, 357.13, 357.23, and 357.25.

The proposed amendments and new rules, when adopted, will bring HHSC into compliance with the federal Medicaid managed care rules at 42 C.F.R. Part 438, Subpart F, Grievance System, and 42 C.F.R. §431.220 and §431.244, as amended, effective August 13, 2002. Medicaid managed care plans will be required to revise member materials to include these changes.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that for the first five years the proposed amendments and new rules are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the amended and new rules.

Mr. Suehs also has determined that during the first five years the proposed amendments and new rules are in effect, the public benefit anticipated as a result of enforcing the new and amended sections will be that MCO enrollees will be able to pursue a state fair hearing as well as file an appeal with the MCO if the MCO takes an adverse action. MCO enrollees will also benefit by being able, under certain circumstances, to request that a state fair hearing be expedited. There is no anticipated impact on small businesses and micro-businesses to comply with the amendment and new rules as proposed, as they will not be required to modify business practices. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated impact on local employment.

HHSC has determined that the proposed amendments and new rules are not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under §2007.043, Government Code.

Written comments on the proposed rules may be submitted to Bonnie Winters, Medicaid/CHIP Division, Texas Health and Human Services Commission, 1100 West 49th Street, Austin, Texas 78756, within 30 days of publication of the proposal in the *Texas Register*.

A public hearing is scheduled for Monday, July 14, 2003, from 8:00 am until Noon. The hearing will be held in room 1420 at the Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751.

The amendments and new rules are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; and Human Resources Code, §32.021(m), and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

No other statutes, articles, or codes are affected by the proposed amendments and new rules.

§357.1. Purpose and Scope.

(a) Purpose. The Health and Human Services Commission (HHSC) is required by state law to promulgate uniform fair hearing rules for all Medicaid-funded services. [~~An opportunity for a fair hearing is required by federal law and regulation in any Medicaid case for an individual whose claim for services is denied or not acted upon promptly. An opportunity for a fair hearing is also required when an operating agency or its designee takes action to suspend, terminate, or reduce services, including a denial of a prior authorization request for Medicaid-covered services. These fair hearing rules will also apply to any hearing involving the transfer or discharge of an individual from a nursing facility or to an individual adversely affected by the preadmission screening and annual resident review requirements.~~]

(1) An opportunity for a fair hearing is required by federal law and regulation:

(A) in any Medicaid case for an individual whose claim for services is denied or not acted upon promptly;

(B) when an operating agency or its designee takes action to suspend, terminate, or reduce services, including a denial of a prior authorization request for Medicaid-covered services;

(C) when an Managed Care Organization (MCO) takes an action, as defined in §357.3 of this chapter (relating to Definitions);

(D) when an adverse determination is made by an operating agency or its designee with regard to the preadmission screening and annual resident review; or

(E) when a determination is made by a skilled nursing facility or nursing facility to transfer or discharge a resident.

(2) Expedited fair hearings. An individual enrolled in a Medicaid MCO may request an expedited fair hearing when:

(A) the MCO determines or the provider indicates that taking the time for a standard appeal and/or fair hearing could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function; and

(B) the individual has exhausted his or her expedited MCO appeal rights.

(b) Scope.

(1) These rules establish fair hearing procedures, which an operating agency will follow when the operating agency is required to conduct a fair hearing for Medicaid-funded services.

(2) An individual's authorized representative, as defined by the operating agency, may, on the individual's behalf, take any step that the individual can take as described in these rules.

§357.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

(1) Action--

(A) Termination, suspension, or reduction of Medicaid eligibility or covered services by an operating agency or its designee, including:

(i) the denial of Medicaid eligibility;

(ii) the denial of program eligibility;

(iii) the denial of a prior authorization request for covered services; and

(iv) the failure of an operating agency or its designee to act within a reasonable amount of time on an individual's request for Medicaid covered services or for an eligibility determination.

(B) A decision made by an operating agency or its designee concerning disenrollment from an MCO.

(C) An adverse determination made by an operating agency or its designee with regard to the preadmission screening and annual resident review.

(D) When an MCO:

(i) denies or limits authorization of a requested service, including the type or level of service;

(ii) reduces, suspends, or terminates a previously authorized service;

(iii) denies, in whole or part, payment for services;

(iv) fails to provide services in a timely manner;

(v) fails to act within the timeframes for resolution of an MCO appeal required by contract under 42 CFR §438.408(b); or

(vi) denies a request from an individual, who is a resident of a rural area with only one MCO, to exercise his or her right, under 42 CFR §438.52(b)(2)(ii), to obtain services outside the network.

(E) A determination by a skilled nursing facility or nursing facility to transfer or discharge a resident.

(F) "Action" does not include expiration of a time-limited service.

~~[(1) Action--Termination, suspension, or reduction of Medicaid eligibility or covered services by an operating agency or its designee. "Action" includes the denial of Medicaid eligibility and the denial of program eligibility. The term also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by an operating agency or its designee with regard to the preadmission screening and annual resident review. "Action" includes a denial of a prior authorization request for covered services affecting an individual. The term also includes the failure of an operating agency or its designee to act upon an individual's request for Medicaid covered services or for an eligibility determination within a reasonable amount of time. "Action" does not include expiration of a time-limited service.]~~

(2) Adverse determination--Determination that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

(3) Date of action--The intended date on which a termination, suspension, reduction, transfer, or discharge becomes effective. It also means the date of the determination made by an operating agency with regard to the preadmission screening and resident review.

(4) Day--Calendar day, unless otherwise specified.

(5) [~~(4)~~] Designee--A contractor of an operating agency authorized to take an action or adverse determination as defined in paragraphs (1) and (2) of this section on behalf of the operating agency.

(6) Fair Hearing--

(A) Expedited Fair Hearing--A fair hearing conducted by an operating agency and held within 3 business days after the receipt of the case file from the MCO for an individual who has exhausted the MCO's expedited appeal process.

(B) Standard Fair Hearing--A fair hearing conducted by an operating agency and held in accordance with this chapter in which a decision is made within 90 days after the receipt of a request.

(7) MCO Appeals--

(A) Expedited MCO appeal--An appeal conducted by an MCO and held within 3 business days after receipt of a request because the individual's health condition meets the criteria for an expedited MCO appeal, determined in accordance with §357.1(b)(2) of this title (relating to Purpose and Scope)

(B) Standard MCO appeal--An appeal conducted by an MCO and held within 30 days after receipt of the request.

(8) MCO--Medicaid managed care organization. An entity that has a current Texas Department of Insurance certificate of authority to operate as an HMO under Chapter 843 of the Texas Insurance Code or as an approved nonprofit health corporation under Chapter 844 of the Texas Insurance Code.

(9) [~~(5)~~] Medicaid eligibility--The eligibility of an individual to receive services under the Texas Medicaid program.

(10) [~~(6)~~] Operating agency--A state agency operating part of the Title XIX (Medicaid) program under the Social Security Act and includes the Department of Health, the Department of Human Services, the Rehabilitation Commission, and the Department of Mental Health and Mental Retardation, and the Health and Human Services Commission.

(11) [~~(7)~~] Prior authorization request--a request for services that are reimbursable only when authorization or approval is obtained before services are rendered. Prior authorized services may be limited in duration, scope, and amount. Services provided beyond those authorized are not reimbursable. If a prior authorization is limited in duration, scope, or amount, a separate request and approval must be obtained for each prior authorized service.

(12) [~~(8)~~] Program eligibility--The eligibility of an individual to receive services within a particular Medicaid program.

§357.5. Notice of Agency Action.

(a) Advance Notice. An operating agency or its designee will deliver to an individual, at least 10 days before the date of action, written notice of the action and of the individual's right to request a standard fair hearing on the action, unless subsection (b) of this section provides otherwise.

[~~(a) Agency Notice.~~]

[~~(1) Notice at time of action. If the action of the operating agency or its designee is the denial of Medicaid or program eligibility or the denial of a prior authorization request, at the time of action, the operating agency or its designee shall give an individual written notice of the individual's right to request a fair hearing on the action.~~]

[~~(2) Advance Notice. If an operating agency or its designee proposes to take an action other than the denial of Medicaid or program eligibility, denial of a prior authorization request, the failure to act upon an individual's request for Medicaid-covered services, or failure to determine eligibility within a reasonable amount of time, the operating agency or its designee shall deliver to the individual notice of the individual's right to request a hearing on the action at least ten days prior to the date of action unless the circumstances in subsection (b) of this section otherwise provide.~~]

(b) Exceptions to advance notice.

(1) Notice at time of action. An operating agency or its designee will mail written notice to an individual at the time of action if:

(A) the action is the denial of Medicaid or program eligibility; or

(B) the action is the denial of a prior authorization request.

(2) Notice not later than the date of action. An operating agency or its designee may mail written notice to an individual not later than the date of action if:

(A) the operating agency or its designee has factual information confirming the death of the individual;

(B) the operating agency or its designee receives a clear written statement signed by the individual that:

(i) he or she no longer wishes services; or

(ii) gives information that requires termination or reduction of services and indicates that he or she understands that this must be the result of supplying that information;

(C) the individual has been admitted to an institution where he or she is ineligible for further services;

(D) the individual's whereabouts are unknown and the post office returns agency or designee mail directed to him or her indicating no forwarding address;

(E) the operating agency or its designee establishes the fact that the individual has been accepted for Medicaid services by another state;

(F) a change in the level of medical care is prescribed by the individual's physician;

(G) the notice involves an adverse determination made with regard to the preadmission screening requirements; or

(H) the action is the transfer or discharge of a resident from a nursing facility and the date of action will occur in less than 10 days pursuant to 42 CFR §483.12(a)(5)(ii) because:

(i) the safety or health of individuals in the facility would be endangered;

(ii) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(iii) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(iv) a resident has not resided in the facility for 30 days.

(3) Notice not required. An operating agency or its designee is not required to provide notice of the agency's or designee's:

(A) failure to act upon an individual's request for Medicaid-covered services; or

(B) failure to determine eligibility within a reasonable amount of time.

[~~(b) Exceptions. The operating agency or its designee may mail written notice to an individual not later than the date of action if:~~]

[~~(1) the operating agency or its designee has factual information confirming the death of the individual;~~]

[~~(2) the operating agency or its designee receives a clear written statement signed by the individual that:~~]

[~~(A) he or she no longer wishes services; or~~]

[~~(B) gives information that requires termination or reduction in services and indicates that he or she understands that this must be the result of supplying that information;~~]

[~~(3) the individual has been admitted to an institution where he or she is ineligible for further services;~~]

[~~(4) the individual's whereabouts are unknown and the post office returns agency or designee mail directed to him or her indicating no forwarding address;~~]

[~~(5) the operating agency or its designee establishes the fact that the individual has been accepted for Medicaid services by another state;~~]

[~~(6) a change in the level of medical care is prescribed by the individual's physician;~~]

[(7) the notice involves an adverse determination made with regard to the preadmission screening requirements; or]

[(8) the action is the transfer or discharge of a resident from a nursing facility and the date of action will occur in less than ten days pursuant to 42 C.F.R. §483.12(a)(5)(ii) because:]

[(A) the safety or health of individuals in the facility would be endangered;]

[(B) the resident's health improves sufficiently to allow a more immediate transfer or discharge;]

[(C) an immediate transfer or discharge is required by the resident's urgent medical needs; or]

[(D) a resident has not resided in the facility for thirty days.]

(c) Content of Notice. The notice will [shall] contain:

(1) the action that the operating agency, its designee, or nursing facility is taking in the case of a denial of Medicaid or program eligibility, a decision concerning disenrollment from an MCO, [or] a denial of a prior authorization request, or that the operating agency intends to take in the case of any other action except for failing to act upon an individual's request for Medicaid covered services or for an eligibility determination within a reasonable amount of time;

(2) the date of action;

(3) a statement of the reason for the action;

(4) a reference to the statutory or regulatory authority supporting the action, or the change in federal or state law that requires the action;

(5) an explanation of the individual's right to request a standard fair hearing and the procedure for requesting same;

(6) a statement that the individual may represent himself or herself or use legal counsel, a relative, a friend, or other spokesperson;

(7) the name and phone number of a person who can answer questions regarding the standard fair hearing process; and

(8) an explanation of the circumstances under which services are continued, or a transfer or discharge is deferred, if a standard fair hearing is requested.

(d) Timeframe for Requesting a Hearing. The operating agency and its designee must allow the individual to request a standard fair hearing within 90 days from the date the notice of agency action [required under subsection (a) of this section] is mailed.

(1) The request for a standard fair hearing must be submitted according to the instructions provided in the notice of agency action sent to the individual [under subsection (a) of this section].

(2) If a request for a standard fair hearing is not received by the operating agency or its designee before the date of action, the action may be taken or allowed.

(3) If a request for a standard fair hearing is not received by the operating agency or its designee within the 90-day period, the individual is deemed to have waived the hearing and the action becomes final.

§357.6. Notice of MCO Action and Resolution of MCO Appeals.

(a) Notice of MCO action

(1) Advance notice. An MCO must deliver to an individual, at least 10 days before the date of action, written notice of the action and of the individual's right to request an MCO appeal and/or a standard fair hearing on the action, unless paragraph (2) of this subsection provides otherwise.

(2) Exceptions to Advance Notice.

(A) An MCO may mail written notice to an individual not later than the date of action under a circumstance described in §357.5(b)(2) of this chapter (relating to Notice of Agency Action).

(B) An MCO may mail written notice to an individual at the time of action if the action is:

(i) denial or limited authorization of a requested service, including the type or level of service;

(ii) denial, in whole or in part, of payment for a service; or

(iii) denial of a request from an individual, who is a resident of a rural area with only one MCO, to exercise his or her right under 42 CFR §438.52(b)(2)(ii) to obtain services outside the network.

(C) An MCO is not required to provide notice of the following actions:

(i) failure to provide services in a timely manner; or

(ii) failure to act within the timeframes for resolution of an MCO appeal required by contract under 42 CFR §438.408(b).

(b) Content of notice of MCO action: The notice must contain:

(1) the action that the MCO is taking or intends to take;

(2) the date of the action;

(3) the reason for the action;

(4) a reference to the statutory or regulatory authority supporting the action, or the change in federal or state law that requires the action;

(5) an explanation of:

(A) the individual's right to request an MCO appeal;

(B) the provider's right to request an MCO appeal on behalf of the individual, with the individual's written consent;

(C) the circumstances under which an expedited MCO appeal is available;

(D) the procedures and timeframes for requesting a standard MCO appeal and an expedited MCO appeal;

(E) a statement that the individual may represent himself or herself or use legal counsel, a relative, a friend, or other spokesperson at an MCO appeal; and

(F) the name and phone number of a person who can answer questions regarding the MCO appeal process.

(6) An explanation of:

(A) the individual's right to request a standard fair hearing;

(B) the procedures and timeframes for requesting a standard fair hearing;

(C) a statement that the individual may represent himself or herself or use legal counsel, a relative, a friend, or other spokesperson at a fair hearing;

(D) the name and phone number of a person who can answer questions regarding the fair hearing process; and

(7) an explanation of the individual's right to have benefits continue pending resolution of an MCO appeal or a standard fair hearing, how to request that benefits be continued, and the circumstances under which the individual may be required to pay the costs of these services.

(c) Criteria for expedited MCO appeal. An individual meets the criteria for an expedited MCO appeal when the MCO determines (for a request from an individual) or the provider indicates (in making the request on the individual's behalf or supporting the individual's request) that taking the time for resolution of a standard MCO appeal could seriously jeopardize the individual's life or health or ability to attain, maintain, or regain maximum function.

(d) Timeframes for resolution of an MCO appeal.

(1) Standard MCO appeal--for resolution of a standard MCO appeal, the MCO must resolve and provide notice of the resolution to the affected parties within 30 days of receipt of the request. The timeframe may be extended in accordance with paragraph (3) of this subsection.

(2) Expedited MCO appeal--for resolution of an expedited MCO appeal, the MCO must resolve and provide notice of the resolution to the affected parties within 3 business days after receipt of the request. The timeframe may be extended in accordance with paragraph (3) of this subsection. The MCO must also make a reasonable effort to provide oral notice of the resolution to the individual.

(3) Extension of timeframes.

(A) An MCO may extend the timeframes described in paragraphs (1) and (2) of this subsection up to 14 days if:

(i) the individual requests the extension; or

(ii) the MCO shows (to the satisfaction of the operating agency, upon its request) that there is need for additional information and how the delay is in the individual's interest.

(B) If the MCO extends the timeframes, it must, for any extension not requested by the individual, give the individual written notice of the reason for the delay.

(e) Notice of MCO appeal resolution. The notice must contain:

(1) the results of the resolution process and the date the appeal was resolved; and

(2) for appeals not wholly resolved in favor of the individual:

(A) the reason for upholding the action;

(B) a reference to the statutory or regulatory authority supporting the action, or the change in federal or state law that requires the action;

(C) an explanation of:

(i) the individual's right to request a fair hearing;

(ii) the circumstances under which an expedited fair hearing is available; and

(iii) the procedures and timeframes for requesting an expedited and standard fair hearing;

(D) a statement that the individual may represent himself or herself or use legal counsel, a relative, a friend, or other spokesperson at the fair hearing;

(E) the name and phone number of a person who can answer questions regarding the fair hearing process; and

(F) an explanation that;

(i) the individual has the right to request to receive benefits while the fair hearing is pending and how to make the request; and

(ii) the individual may be held liable for the cost of those benefits if the fair hearing decision upholds the MCO's action.

(f) Timeframe for requesting a standard fair hearing. The operating agency or its designee must allow the individual to request a standard fair hearing within 90 days after the date the notice of MCO action was mailed as required by subsection (a) of this section.

(1) The request for a standard fair hearing must be submitted according to the instructions provided in the notice of MCO appeal resolution as required by subsection (e) of this section.

(2) If a request for a standard fair hearing is not received within the 90-day period, the individual is deemed to have waived the right for a standard fair hearing and the action becomes final.

(g) Timeframe for requesting an expedited fair hearing. The operating agency or its designee must allow the individual to request an expedited fair hearing within 10 days after the date the notice of MCO appeal resolution is sent.

(1) The request for an expedited fair hearing must be submitted according to the instructions provided in the notice of MCO expedited appeal resolution.

(2) If a request for an expedited fair hearing is not received within the 10 day period, the individual is deemed to have waived the right for an expedited fair hearing. A request received after the tenth day will be considered a request for a standard fair hearing.

§357.7. Maintaining Benefits or Services.

(a) Except as otherwise specified in subsections (b), (d) and (e) of this section, if the action is other than a denial of Medicaid or program eligibility or a denial of a prior authorization request and a request for hearing is received before the date of action, the action will not be taken and services will be continued until a final decision is rendered following a fair hearing.

(b) The operating agency or its designee may terminate or reduce services before a hearing decision is rendered if:

(1) it is determined at the fair hearing that the sole issue is one of state or federal law or policy; and

(2) the operating agency or its designee informs the individual in writing of its intent to reduce or terminate services pending the hearing decision at least 5 [~~five~~] days before the termination or reduction would be effective.

(c) The operating agency or its designee may recover or recoup the cost of any services provided to the individual to the extent that the services were furnished solely by reason of this section if the fair hearing decision supports the operating agency's or designee's action.

(d) If notice is mailed under §357.5(b) of this chapter (relating to Notice of Agency Action) and the operating agency or its designee receives the individual's request for a hearing within 10 [~~ten~~] days of the mailing of the notice, and the operating agency or its designee determines that the action resulted from something other than the application of federal or state law or policy, the operating agency or its designee will reinstate and continue an individual's services until a hearing decision is rendered.

(e) The operating agency or its designee has no obligation to begin services requiring prior authorization pending a final decision.

§357.11. Preliminary Matters for a Standard Fair Hearing.

(a) Notification of Standard Fair Hearing. The hearing official will [~~shall~~], at least 10 [~~ten~~] days prior to the date of the fair hearing, send a written notification of the fair hearing to the individual who has requested the fair hearing.

(1) This notice will be sent to the address of record for the individual or to the address indicated in the request for fair hearing.

(2) The notification will [~~shall~~] contain:

(A) the basis of the [~~proposed~~] action or intended action;

(B) the time, date, and location [~~place~~] of the fair hearing;

(C) a statement that the individual may request the fair hearing to be conducted based on the taking of oral testimony (an "oral hearing"), or a fair hearing based on written information contained in any appropriate file and additional written information that the individual may wish to submit for consideration (a "document hearing"), as is described in §357.17 of this chapter (relating to Document Hearing);

(D) a statement that the individual may request any reasonable accommodation required due to disability or language comprehension;

(E) a statement that, before and during the fair hearing, the individual may request to examine any appropriate file and documents or records the operating agency wants the hearing official to consider; and

(F) instructions on submitting written medical information for the hearing official to consider and the deadline for submitting that information.

(b) Access to Records

(1) Upon the individual's request, the individual will [~~shall~~] be given the opportunity to examine any appropriate file, and other documents or records the operating agency wants the hearing official to consider.

(2) If the individual intends to introduce written medical information at the fair hearing, that information must be submitted to the hearing official at least 5 [~~five~~] days prior to the fair hearing, to allow the operating agency to obtain a review of the material by medical staff persons. The failure to so submit such medical information shall not render the material inadmissible, but the hearing official will [~~shall~~] be permitted to keep the hearing record open. The hearing official may request a medical review by the operating agency of the submitted material. If a hearing official requests a medical review, the hearing official will mail a copy of that medical review to the individual within 7 [~~seven~~] days after the hearing. The individual will have 10 [~~ten~~] days from the date the medical review was mailed to submit to the hearing official a written response or rebuttal to the medical review. The hearing official will close the hearing record at the end of the tenth day from the date the medical review was mailed to the individual.

(c) Representation. An individual may represent himself or herself, or be represented by legal counsel, a relative, a friend, or other designated spokesperson. If the individual does not appear at the hearing, the operating agency may require the submission of documentation demonstrating that the representative appearing on the individual's behalf has authority to represent the individual.

(d) Additional Medical Assessment. If the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, and if the hearing official considers it necessary to have a medical assessment other than that of the person involved in making the original decision, that medical assessment must be obtained at the operating agency's expense and made part of the record.

§357.12. Preliminary Matters for an Expedited Fair Hearing for Individuals Enrolled With an MCO.

(a) Notification of Expedited Fair Hearing. The hearing official will notify the individual who has requested the fair hearing of the date and time of the fair hearing via a telephone call or fax. The notification will contain:

(1) the basis of the action or intended action;

(2) the time, date, and location of the expedited fair hearing;

(3) a statement that the individual may request the expedited fair hearing to be conducted based on the taking of oral testimony (an "oral hearing") or an expedited fair hearing based on written medical information contained in any appropriate file and additional medical information that the individual may wish to submit for consideration (a "document hearing"), as described in §357.17 of this chapter (relating to Document Hearing);

(4) a statement that the individual may request any reasonable accommodation required due to disability or language comprehension;

(5) instructions on submitting written medical information for the hearing official to consider and the deadline for submitting that information.

(b) Access to Records

(1) Information submitted by the MCO. Upon receipt of the individual's request for an expedited fair hearing, the hearing office staff will notify the MCO and require the MCO to deliver, within 1 business day, a copy of all of the information the MCO used for resolving the expedited MCO appeal to:

(A) the hearing official; and

(B) the individual.

(2) Information submitted by the individual.

(A) The individual may submit written medical information prior to the hearing, at the hearing or within 10 days after the hearing;

(B) The hearing official may request a medical review by the operating agency of the submitted material.

(C) If the individual submits written medical information less than 3 business days prior to the hearing, then:

(i) The hearing official may keep the hearing record open for up to 3 business days after receipt of the material.

(ii) The individual waives the 3-business-day timeframe for the hearing official to make a decision; and

(iii) The hearing official will make a decision no later than the end of the third business day after receipt of the material.

(c) Representation. An individual may represent himself or herself, or be represented by legal counsel, a relative, a friend or other designated spokesperson. If the individual does not appear at the expedited fair hearing, the operating agency may require the submission of

documentation demonstrating that the representative appearing on the individual's behalf has authority to represent the individual.

§357.13. Location of Hearing and Accommodations.

(a) The hearing official will [~~shall~~] determine the location of the hearing or whether it is appropriate to conduct the hearing by telecommunication as provided in §357.15 of this chapter [~~title~~] (relating to Telecommunication). In making this determination, the hearing official will consider the location of the individual.

(b) Accommodations.

(1) The operating agency will provide:

(A) any reasonable accommodation for disclosed disabilities;

(B) suitable interpretation for individuals with limited English proficiency.

(2) Requests for any reasonable accommodation and requests fro an interpreter shall be made to the hearing official as follows:

(A) for a standard fair hearing--in writing, at least 3 days prior to the hearing; and

(B) for an expedited fair hearing--at the time the individual is notified of the expedited fair hearing.

[~~(b) The operating agency shall provide any reasonable accommodation for disclosed disabilities. Requests for any reasonable accommodation should be made in writing to the hearing official at least three days prior to the hearing date.~~]

[~~(c) The operating agency shall provide suitable interpretation for individuals with limited English proficiency. Requests for an interpreter should be made in writing to the hearing official at least three days prior to the hearing date.~~]

§357.17. Document Hearing.

(a) The standard fair hearing may be conducted based on the written information contained in any appropriate file and additional written information submitted to the hearing official and the other party not less than 5 [~~five~~] days prior to the fair hearing without the necessity of taking oral testimony, provided that the parties are given the opportunity to respond to any written material submitted.

(b) The expedited fair hearing may be conducted based on the written information contained in the MCO case file and any additional written information submitted by the individual.

(1) The individual must submit any additional written information within 10 business days after receiving notification of the expedited fair hearing as described in §357.12(a) of this chapter (relating to Preliminary Matters for an Expedited Fair Hearing for Individuals Enrolled with an MCO).

(2) If the individual submits additional written information less than 3 business days prior to the hearing, then:

(A) the individual waives the 3-business-day timeframe for the hearing official to make a decision; and

(B) the hearing official will make a decision no later than the end of the third business day after receipt of the information.

§357.21. Burden of Proof.

(a) The operating agency bears the burden of proof in a fair hearing on an action described in §357.3(1)(A) - (F) of this chapter (relating to Definitions) [~~or an adverse determination~~].

(b) The MCO bears the burden of proof in a fair hearing on an action described in §357.3(a) of this chapter (relating to Definitions).

(c) [~~(b)~~] The nursing facility bears the burden of proof in a fair hearing on an action described in §357.3(1)(E) of this chapter (relating to Definitions) [~~transfer or discharge case~~].

(d) [~~(c)~~] The individual bears the burden on any issue requiring the showing of "good cause" or an affirmative defense to the action or adverse determination.

§357.23. Procedural Rights of the Individual.
The individual has the right to:

(1) examine at a reasonable time before the date of the fair hearing and during the hearing the contents of any appropriate file, and all documents and records to be considered by the hearing official [~~used by the operating agency or nursing facility at the hearing~~];

(2) bring witnesses;

(3) establish all pertinent facts and circumstances;

(4) present an argument without undue interference; and

(5) question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

§357.25. Dismissal of Hearing.
The hearing official will [~~shall~~] dismiss a request for a fair hearing and the [~~proposed~~] action becomes final [~~may be taken~~] if the individual withdraws the request in writing or fails to appear at the scheduled hearing without good cause.

§357.29. Hearing Decisions.

(a) Fair hearing [~~Hearing~~] decisions must be based exclusively on evidence introduced at the hearing and received in evidence.

(b) The operating agency or its designee may grant, deny, terminate, suspend, modify, or reduce services in accordance with the hearing decision as rendered following a fair hearing.

(c) Record. The record of the hearing consists of the following:

(1) A transcript or recording of testimony and exhibits received in evidence.

(2) All documents and requests for admission, together with the ruling on admissibility made by the hearing official.

(3) The hearing official's decision, composed of a statement of the persuasive evidence, findings of fact and conclusions of law (identifying the relevant regulations and/or statutes), and a statement of restored benefits, if appropriate.

(d) Fair Hearing Decision Timeframes.

(1) Standard fair hearing--the hearing official will make a decision and send a copy of the decision to the individual within 90 days of the date of the request for a standard fair hearing, unless the individual waived the 90 day requirement in writing.

(2) Expedited Fair Hearing--the hearing official will make a decision and send a copy of the decision to the individual within 3 business days after the receipt of the case file from the MCO, unless the individual waives the 3-day requirement. The hearing official will make a reasonable effort to notify the individual via telephone or facsimile if requested by the individual.

[~~(d) The hearing decision must be made and a copy of the decision furnished to the individual within 90 days of the request for a fair hearing unless the individual waives the 90-day requirement in writing.~~]

(e) If the action was taken [~~proposed~~] by a designee of the operating agency, the operating agency will promptly [~~also~~] notify the

designee of its decision. The decision of the operating agency is binding on the designee.

(f) Fair hearing [~~Hearing~~] decisions are available to the public, subject to the requirements under federal and/or state law for safeguarding information relating to the Medicaid program and for protecting the privacy of individually identifiable health information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303622
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 424-6576

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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

Chapter 62, Health and Safety Code, establishes the State Child Health Plan authorized under Title XXI of the federal Social Security Act, 42 U.S.C. §§1397aa, et seq. Section 62.051, Health and Safety Code, designates the Commission as the agency responsible for developing the state-designed child health plan program for Texas, making policy for the program, and adopting rules as necessary to implement Chapter 62.

The Health and Human Services Commission (HHSC or Commission) proposes to amend Chapter 370, State Children's Health Insurance Program. Specifically, the HHSC proposes amendments to Subchapter A, §370.4 and §370.10, concerning Program Administration; Subchapter B, Division 1, §§370.20-370.25, concerning TexCare Partnership Application Process; Division 2, §370.30, §370.31, concerning Applicant Rights and Responsibilities Regarding Application and Eligibility; Division 3, §370.40, concerning Eligibility Determination; Division 4, §§370.43, 370.44, 370.46, 370.48, 370.49, concerning Eligibility Criteria; Division 5, §§370.51-370.54, concerning Review and Reconsideration of Eligibility Denials and Temporary Enrollment and new Subchapter C, Division 1, §§370.301, 370.303, 370.305, 370.307, 370.309, concerning TexCare Enrollment and Division 2, §§370.321, 370.323 and 370.325, concerning Cost-Sharing Requirements. Throughout the Chapter, the proposed amendments replace "TCP" (an abbreviation of TexCare Partnership), wherever it occurs, with "TexCare." In subchapter A, Program Administration, §370.4, Definitions, the definitions for "income deductions" and "Texas Healthy Kids Corporation" are deleted. In addition, a definition was added for "gross budget group income." The definition of "income eligibility standard" was changed to mean the "monthly gross budget group income." The definitions have been renumbered to reflect the proposed changes.

Amendments are proposed to several rules in subchapter B, Application Screening, Referral and Processing. The amendments are based on legislative changes to income eligibility standards and removal of the deduction allowances. In Division 1, TexCare application process, the proposed amendment to §370.22, Completion of telephone applications, adds a child's social security number or proof of application to the Social Security Administration for a social security number to the information that must be included in an application. Under the amendments, certain information on budget groups no longer need be included in the application.

In Division 4, Eligibility criteria, the proposed amendment to §370.43, Citizenship and residency, adds refugee letters to the documents that may be submitted to show that a child is a qualified alien. The proposed amendment to §370.44, currently Income (as proposed, Income and assets), deletes language concerning net income and income deductions and adds language concerning gross income. Under the proposed amendment, a gross income test will be used to determine eligibility. The proposal also deletes provisions concerning verification of income deductions. Section 370.44, as proposed, requires an assets test for budget groups with a gross monthly income greater than 150% of the federal poverty level (FPL).

Section 370.46 governs the waiting period and is amended to reflect legislative changes to §62.154, Health and Safety Code, which requires a 90-day waiting period for applicants determined to be CHIP eligible but who do not meet certain program exceptions. As proposed, the waiting period would begin on the first day of the month in which or after which the child is enrolled in CHIP, depending on whether enrollment is before or after the 15th of the month. The proposal also adds to the exempt category children who have access to group-based health benefits plan coverage and who are required to participate in HHSC's premium payment reimbursement program.

The Commission is also proposing new Subchapter C, Enrollment, Disenrollment, and Renewal of Membership. Proposed language in Divisions 1 and 2 removes the requirement of an annual enrollment fee. Proposed Division 1, TexCare Enrollment, addresses enrollment issues. Proposed new §370.301 identifies the contents of the CHIP enrollment packet. Section 370.303 explains how to complete the enrollment process. Section 370.305 governs the enrollment process for children with complex special health care needs. Section 370.307 addresses CHIP's continuous enrollment period. Under the proposed new rule, a child determined to be CHIP eligible will remain enrolled for a period of 6 months. This is a change from the previous continuous eligibility period of 12 months for CHIP. Section 370.309 explains what happens if an enrollment packet is submitted that is incomplete or missing required information.

Division 2, Cost-Sharing Requirements, of proposed new subchapter C governs cost-sharing requirements. Sections 370.321, 370.323, and 370.325 explain the cost-sharing requirements, the exemptions to cost-sharing, and the annual cost-sharing cap. Under proposed §370.321, cost-sharing requirements, cost sharing may be determined based on the maximum levels authorized under federal law and applied to income levels so as to maximize administrative costs. Proposed §370.325, Annual cost-sharing cap, establishes a cost sharing cap of 2.5% of gross income during the 6-month coverage period for budget groups at or below 150% of FPL. Budget groups with gross income during the 6-month coverage period greater than 150% of FPL have a cost-sharing cap equal to 5% of its gross income.

The proposed amendments will bring CHIP into compliance with federal law, H.B. 2292, 78th Leg., Regular .Session. (2003), and the General Appropriations Act, 78th Leg., R.S. (2003). The proposed amendments also update references, delete unnecessary

terms and provisions, and make other non-substantive changes for clarification.

Tom Suehs, Chief Financial Officer, has determined that a savings would result from the proposed amended and new rules. Annual savings to General Revenue funds are; $83.8M in FY04, $103.4 in FY05, $87.1M in FY06, $90.6M in FY07, and $94.2M in FY08.

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with this proposal. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the rules as proposed. There is no anticipated economic costs to persons who are required to comply with the amended and new rules as proposed. There is no anticipated fiscal impact to local government. The proposal will not negatively impact local employment.

Mr. Suehs has also determined that for each year of the first five years the proposal is in effect, the public will benefit from adoption of the amendments. The anticipated public benefit, as a result of enforcing the proposal, will be to continue to make low-cost insurance available for children of low-income families within levels of available appropriated funds. However, public hospitals and medical facilities may incur more cost as uninsured children seek medical attention.

HHSC has determined that none of the proposed amended and new rules is a "major environmental rule" as defined by §2001.0225, Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely and materially affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. None of the proposed amended or new rules is specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has evaluated the takings impact of the proposed rules under §2007.043, Government Code. HHSC has determined that this action does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking. The proposed amended and new rules are administrative and do not impose any new regulatory requirements. The proposal is reasonably taken to fulfill requirements of state law.

Public comment may be submitted in writing to Greg Holt, Health and Human Services Commission, by mail addressed to P.O. Box 13247, Austin, Texas 78711, or email at Greg.Holt@hhsc.state.tx.us. Comments must be submitted by 5:00 p.m., Central Time, within 30 days of publication of this proposal in the *Texas Register*. Further information may be obtained by calling Gregory Holt at (512) 685-3145.

HHSC has scheduled a public hearing to accept public testimony regarding the proposed rules. The hearing will be held from 28:00 to 512:00 p.m., Central Time, on July 164, 2003, in the Public Hearing Room of the Brown-Heatly State Office Building, 4900 North Lamar Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Linda Williams, Medicaid/CHIP, 512-424-6646 or linda.williams@hhsc.state.tx.us.

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §370.4, §370.10

The amendments are proposed under §531.033, Government Code, which authorizes the commissioner of health and human services to adopt rules necessary to carry out HHSC's duties under Chapter 531; under §62.051(d), Health and Safety Code, which directs HHSC to adopt rules necessary to implement Chapter 62, Health and Safety Code, concerning CHIP; and under §2001.006, Government Code, which allows state agencies to adopt rules in preparation for the implementation of legislation.

No other statutory provisions are affected by the proposed rules.

§370.4. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Administrative Contractor" means the entity that performs administrative services for the CHIP under contract with the Commission.

(2) "Entrant" [~~Alien~~] means a person who is not a native born or naturalized citizen of the United States of America.

(3) "Applicant" means an individual who lives with the child and applies for health insurance coverage on behalf of the child. An applicant can only be:

(A) a child's custodial parent, whether natural or adoptive;

(B) a child's grandparent, relative or other adult who provides care for the child;

(C) an emancipated minor applying for himself/herself; or

(D) a child's step-parent.

(4) "Application" means the standardized, written document issued by TexCare [~~TCP~~] that an applicant must complete to apply for health care benefits or coverage through CHIP.

(5) "Application completion date" means the calendar date a completed CHIP application is entered into the TexCare [~~TCP~~] database.

(6) "Budget Group" means the group of individuals who live in the home with the child for whom an application for health insurance is submitted and whose information is used to establish family size and calculate income. Individuals receiving Supplemental Security Income payments are not included in the Budget group. Budget group members include only:

(A) the child seeking health insurance benefits;

(B) the child's siblings who live with the child (biological, adopted, or step-siblings);

(C) the child's natural or adoptive parents; or

(D) the child's step-parent.

(7) "Children's Health Insurance Program" or "CHIP" means the Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C, §§1397aa, et seq.) and chapters 62 and 63, Health and Safety Code.

(8) "Commission" or "HHSC" means the Health and Human Services Commission.

(9) "Completed application" means an application entered into the TexCare [~~TCP~~] database that includes all information required under §370.23.

(10) "Countable income" means any type of payment that is a regular and predictable gain or a benefit to a budget group that is not specifically exempted. Regular and predictable income is income received in one month that is either likely to be received in the next month and/or was received on a regular and predictable basis in past months. It does not include income that is not received on a regular and predictable basis in past months, or is received by the child or sibling member of the budget group who is enrolled in school.

(11) "Children's Health Insurance Program Service Area" or "CSA" means one of the designated areas in the state that is served by one or more of the CHIP Health Plans or the CHIP Exclusive Provider Organization.

(12) "Community-based Organization" or "CBO" means an organization that contracts with the Commission to provide outreach services to applicants for CHIP coverage.

[~~(13) "Dental Plan" means an insurance company, health maintenance organization, or other entity regulated by the Texas Department of Insurance that contracts with the Commission to provide dental benefits coverage to CHIP members.~~]

[~~(14) "Department" or "TDH" means the Texas Department of Health.~~]

[~~(15) "Income deductions" means standardized deductions that are applied to the countable income of the budget group during the CHIP application process.~~]

(13) [~~(16)~~] "Enrollment" means the process by which a child determined to be eligible for CHIP is enrolled in a CHIP health plan serving the CHIP Service Area in which the child resides.

(14) [~~(17)~~] "Exempt income" means income received by the budget group that is not counted in determining income eligibility.

(15) [~~(18)~~] "FPL" means Federal Poverty Level Income Guidelines.

(16) [~~(19)~~] "Health Plan" means a licensed health maintenance organization, indemnity carrier, or authorized exclusive provider organization that contracts with the Commission to provide health benefits coverage to CHIP members.

(17) [~~(20)~~] "Income eligibility standard" means monthly gross [~~net~~] budget group income at or below 200% of current (FPL). A child meets the CHIP income eligibility standard if the budget group's monthly gross [~~net~~] income exceeds the income eligibility standard applied to the child in the Texas Medicaid Program and is at or below the 200% of FPL CHIP monthly income standard.

(18) [~~(21)~~] "Member" means a child enrolled in a CHIP Health Plan.

(19) [~~(22)~~] "Gross [~~Net~~] budget group income" means monthly countable income before any payroll [~~minus~~] deductions.

(20) [~~(23)~~] "Qualified Entrant [~~Alien~~]" means an alien who applies for CHIP coverage and who, at the time of such application, satisfies the criteria established under 8 U.S.C. §1641(b).

(21) [~~(24)~~] "SSI" means Supplemental Security Income.

(22) [~~(25)~~] "State fiscal year" means the 12-month period beginning September 1 of each calendar year and ending August 31 of the following calendar year.

(23) [~~(26)~~] "TexCare" [~~"Partnership" or "TCP"~~] means the name designated to publicly identify the operational entity that provides administrative services for the CHIP program.

[~~(27) "Texas Healthy Kids Corporation" or "THKC" means the non-profit corporation established under chapter 109, Health & Safety Code.~~]

(24) [~~(28)~~] "TDHS" means the Texas Department of Human Services.

§370.10. Duties and Responsibilities of the Commission.

The Commission is the state agency whose responsibilities include, but are not limited to [,] the following:

(1) developing a state-designed CHIP to obtain health benefits coverage for children in low-income families in a manner that qualifies for federal funding under Title XXI of the Social Security Act;

(2) making policy for CHIP, including policy related to covered benefits provided under the program, a duty which the Commission may not delegate to another agency or entity;

(3) overseeing the implementation of CHIP;

(4) adopting necessary rules to implement CHIP;

(5) contracting with appropriate individuals and organizations to provide CHIP benefits coverage, community-based outreach, and other services related to the implementation or operation of the CHIP program;

(6) conducting a review of each entity that enters into a contract with the Commission to ensure that the entity is available, prepared and able to fulfill the entity's obligations under the contract; and

(7) ensuring that amounts spent for CHIP administration do not exceed any limit on administrative expenditures imposed by federal law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. APPLICATION SCREENING, REFERRAL AND PROCESSING

DIVISION 1. TEXCARE PARTNERSHIP APPLICATION PROCESS

1 TAC §§370.20 - 370.25

The amendments are proposed under §62.051(d), Health and Safety Code, which authorizes the Commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the Commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The amendments implement §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.20. Availability and method of initiating an application.

The TexCare [~~TCP~~] application process may be initiated:

(1) in writing from an application booklet available from TexCare [~~TCP~~] upon telephone request. The application booklet may also be available through CBOs, local organizations that support CBO outreach efforts, and participating CHIP health care providers;

(2) by computer using printable applications available over the Internet from the TexCare [~~TCP~~] website; or

(3) by telephone through TexCare's [~~TCP's~~] toll-free telephone number or through TDD.

§370.21. Application assistance.

An applicant for CHIP coverage may obtain assistance completing the application:

(1) by telephone from TexCare [~~TCP~~] staff during hours that are posted on the TexCare [~~TCP~~] website or published in applications, brochures, or other marketing media issued or approved by TexCare [~~TCP~~]. Telephone applications may also be accepted by TexCare [~~TCP~~] staff;

(2) by telephone or in person from a local CBO; or

(3) by telephone or in person from a licensed insurance agent or broker that contracts with a CHIP health plan or CBO, provided the applicant is not directly or indirectly induced to enroll in a specific health plan.

§370.22. Completion of telephone applications.

If an applicant telephones to apply, TexCare [~~TCP~~] completes as much of the application as possible over the telephone, prints it, and mails it to the applicant. The applicant is responsible for completing any missing information, signing the application, attaching all required verifications, and returning it to TexCare [~~TCP~~].

§370.23. Contents of completed applications.

A completed application must include the following:

(1) Information concerning the applicant, consisting of:

(A) The applicant's full name;

(B) The applicant's home address (including city, county, state and zip code); and

(C) The applicant's mailing address (including city, county, state, and zip code) if different from the home address;

(2) Information concerning each child for whom an application is filed, consisting of:

(A) The child's full name;

(B) A description of the applicant's relationship to the child;

(C) The child's date of birth;

(D) The child's Social Security Number or proof of application to the Social Security Administration to receive a social security number;

(E) [~~(D)~~] The child's status as a United States citizen or a legal resident;

(F) [~~(E)~~] The full name of the child's mother or father;

(G) [~~(F)~~] If the child has income reported on the application, the child's school status; and

(H) [~~(G)~~] Confirmation by the applicant whether the child currently has health insurance[~~, or had health insurance within 90 days prior to the date the application is being completed~~] or Medicaid.

(3) Information concerning the budget group, including:

(A) budget group income, including the name of the person receiving the income, the employer or source of the income, the amount received, and the frequency of receipt; and

(B) whether anyone in the budget group is pregnant;

[~~(C) whether anyone in the budget group pays for child or disabled adult care to permit a budget group member to work or receive training;~~]

[~~(D) whether anyone in the budget group pays child support and/or alimony to anyone outside the home;~~]

(4) the applicant's original signature and the date of signature; and

(5) required income, immigration status, and income deduction verifications.

§370.24. Electronic Entry of Application Information.

Within three working days from receipt of an application TexCare [~~TCP~~]:

(1) enters the application, regardless of origin or completeness, into a database;

(2) date-stamps the application; and

(3) assigns a unique application identification number.

§370.25. Incomplete applications.

(a) Missing information.

(1) TexCare [~~TCP~~] monitors the status of entered, incomplete application information.

(2) If it receives an incomplete application, TexCare[~~TCP~~] sends the applicant an initial follow-up letter requesting the missing information. TexCare [~~TCP~~] will send the initial follow-up letter within two working days from the date the application information is entered into the database.

(3) If TexCare [~~TCP~~] does not receive the requested missing information within 14 calendar days, TexCare [~~TCP~~] sends the applicant a second follow-up letter requesting the missing information.

(b) Missing signatures.

(1) If an application is incomplete because it lacks the signature of the applicant, or a parent, or the step-parent in the budget group, TexCare [~~TCP~~] enters the application information into the database, then produces and mails an application back to the applicant for signature.

(2) The application remains incomplete until TexCare [~~TCP~~] receives the signed application and enters receipt of the signed application into the database.

(c) Termination of an incomplete application.

(1) If an application remains incomplete 90 calendar days from the date TexCare [~~TCP~~] entered the incomplete application information into the database, the application process is terminated.

(2) An applicant whose application is terminated because it is incomplete must complete a new TexCare [~~TCP~~] application before CHIP coverage is provided.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. APPLICANT RIGHTS AND RESPONSIBILITIES REGARDING APPLICATION AND ELIGIBILITY

1 TAC §370.30, §370.31

The amendments are proposed adopted under § 62.051(d), Health and Safety Code, which authorizes the Commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the Commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The proposed rules implement §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.30. Applicant rights.

An applicant has the right to:

(1) be treated fairly and equally regardless of race, color, religion, national origin, gender, political beliefs or disability;

(2) request a review and/or reconsideration of an adverse decision related to CHIP eligibility, disenrollment, or increased cost sharing

(3) file a complaint, in writing or by telephone, about the application process for reasons other than an eligibility decision, disenrollment, or an increase in cost-sharing within 30 working days from the date of an incident. TexCare [~~TCP~~] must respond in writing within 15 working days.

§370.31. Applicant responsibilities.

(a) An applicant is responsible for:

(1) correctly and truthfully completing the TexCare [~~TCP~~] application form regardless of where the application was obtained;

(2) providing all required verifications; and

(3) mailing the completed, signed application along with all required verifications to TexCare [~~TCP~~].

(b) If an applicant intentionally misrepresents information on an application to receive a program benefit, the applicant:

(1) is responsible for reimbursing the state for the cost of improperly paid benefits; and

(2) may be subject to prosecution under the Texas Penal Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. ELIGIBILITY DETERMINATION

1 TAC §370.40

The amendment is proposed under §62.051(d), Health and Safety Code, which authorizes the Commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the Commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The proposed rule implements §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.40. Determining Eligibility.

(a) Once TexCare [~~TCP~~] enters a completed application into the database, the automated eligibility system passes the information through an eligibility screen to determine potential eligibility for CHIP[~~,~~] or Medicaid[~~, or THKC~~].

(b) CHIP eligibility is determined not later than the 30th day after the date a complete application is submitted on behalf of a child, unless the child is referred for Medicaid application in accordance with the criteria specified in Sections 370.43 through 370.47.

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DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §§370.43, 370.44, 370.46, 370.48, 370.49

The amendments are proposed under §62.051(d), Health and Safety Code, which authorizes the Commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the Commissioner of health and human services with authority to

adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The proposed rules implement §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.43. Citizenship and residency.

(a) An eligible CHIP child must be a citizen of the United States of America or a non-citizen who is a qualified alien.

(b) An eligible CHIP child must be a Texas resident. A child is a Texas resident if:

(1) the child's fixed residence is located in Texas and the child's family intends for the child to return to Texas after any temporary absences;

(2) the child has no fixed residence but the child's family intends to remain in the state; or

(3) the child has recently moved to Texas and the child's family intends to remain in the state.

(c) A child does not lose status as a state resident because of temporary absences from the state. No time limits are placed on a child's temporary absence from the state.

(d) There are no durational requirements for residency. A child without a fixed residence or a new resident in the state who intends to remain in the state is considered a Texas resident.

(e) The applicant states the child's citizenship, lawful resident status and Texas residency on the TCP application form. If the applicant states that the child is a United States citizen and a Texas resident, no verification of this status is required. If the applicant states the child is not a United States citizen, the applicant must provide a photocopy of a Resident Alien Card (I-551) [~~Green Card~~], I-94 Card, [~~(White Visitor Card)~~] I-688-B, I-766, refugee letter, [~~I-551,~~] an INS asylum letter, an order from an immigration judge granting asylum or showing deportation was withheld, employment authorization, passport or visa, or any other Bureau of Citizenship and Immigration Services (formally know as the U.S. Immigration and Naturalization Service) [~~U. S. Immigration and Naturalization Service~~] approved document that demonstrates that the child is a qualified alien.

§370.44. Income.

(a) General principles.

(1) Income is either countable income or exempt income.

(2) TexCare [~~TCP~~] must consider the income of all persons included in the budget group.

(b) Earned income is countable income received by the budget group and includes:

(1) Military pay and allowances for housing, food, base pay, and flight pay;

(2) Self-employment income (minus business expenses). A person is self-employed if he is engaged in an enterprise for gain, either as an independent contractor, franchise holder, or owner-operator. If someone other than the earner withholds either income taxes or FICA from the earner's earnings, the earner is an employee and is not self-employed;

(3) Wages, salaries, and commissions; and

(4) On-the-Job Training payments funded under the Workforce Investment Act of 1998, 29 U.S.C. §§2801-2872, if received by an adult member of the budget group.

(c) Unearned income is countable income received by the budget group and includes:

(1) Cash contributions received on a regular and predictable basis;

(2) Child support payments[~~, except for the first $50 from the budget group's total monthly child support payments~~];

(3) Disability insurance benefits;

(4) Government-sponsored program payments, (except for Supplemental Security Income payments); however, payments from crisis intervention programs are exempt;

(5) Pensions;

(6) Retirement, survivors, and disability insurance (RSDI) benefits and other retirement benefits (minus the amount deducted from the RSDI check for the Medicare premium and any amount that is being recouped for a prior overpayment);

(7) Income from property, whether from rent, lease, or sale on an installment plan;

(8) Unemployment compensation;

(9) Veterans Administration (VA) benefits other than benefits that meet a special need;

(10) Worker's compensation benefits; and

(11) Alimony.

(d) All income that is not included as countable earned income or countable unearned income is exempt income.

(e) Gross [~~Net~~] Income Test [~~income test and deductions~~].

[~~(1) Net income test.~~]

(1) [~~(A)~~] Gross [~~The net~~] income [~~test~~] is used to determine eligibility.

(2) [~~(B)~~] Gross [~~Net~~] monthly income is [~~gross~~] monthly income before any payroll deduction [~~minus income deductions~~].

(3) [~~(C)~~] A child is eligible if the budget group's gross [~~net~~] monthly income, after rounding down cents, is equal to or less than the 200% of FPL for the budget group's size. All budget groups must pass the gross [~~net~~] income test.

(4) Budget groups with a gross monthly income greater than 150% of FPL will be subject to an assets test.

[~~(2) Income deductions. TCP makes the following deductions from countable income:~~]

[~~(A) TCP allows a standard work-related expense deduction of $120 a month for each employed budget group member;~~]

[~~(B) TCP deducts payments for the actual costs for the care of a dependent child or disabled adult, if necessary for employment or to receive training. The maximum dependent care deduction is $200 per month for each dependent child and $175 per month for each dependent disabled adult.~~]

[~~(C) TCP deducts payments for the actual costs of alimony or child support paid to an individual who is not a budget group member.~~]

[~~(D) TCP deducts the first $50 of the total child support payments the budget group receives.~~]

(f) Computing countable income. TexCare [~~TCP~~] converts income received non-monthly to monthly amounts by:

(1) dividing yearly income by 12;

(2) multiplying weekly income by 4.33;

(3) adding amounts received twice a month; or

(4) multiplying amounts received every other week by 2.17.

(g) Verification of current countable income.

(1) Countable income must be verified unless the amount of income reported by the applicant makes the child ineligible.

(2) TexCare [~~TCP~~] verifies all countable income at initial application.

(3) Verification may include, but is not limited to, obtaining:

(A) copies of one or more paycheck stubs issued within the immediately preceding 60-day period;

(B) a copy of the most recent federal income tax return;

(C) a copy of the applicant's most recent Social Security statement;

(D) copies of one or more child support checks; or

(E) written confirmation from an employer of the applicant's income.

(h) Verification of income deductions. Verification may include, but is not limited to, obtaining:

(1) a copy of a paycheck stub showing garnishment of wages for a child support deduction if the paycheck clearly indicates the deduction is for child support;

(2) a copy of a hand written statement authored and signed by the custodial parent verifying the child support deduction; or

(3) a copy of a divorce decree specifying child support payments.

§370.46. Waiting period.

(a) The waiting period is a delay in the start of health insurance coverage and applies to a child determined to be CHIP eligible and extends for a period of 90-days after:

(1) the first day of the month in which the applicant is determined eligible for CHIP, if the day of eligibility is on or before the 15th day of the month; or

(2) the first day of the month after which the applicant is determined eligible for CHIP, if the day of eligibility is after the 15th day of the month

[~~(a) A child who is otherwise eligible for CHIP may not be enrolled if the child was covered by health insurance at any time within the 90 days immediately preceding the submission of a CHIP application. After the 90-day waiting period, the child may be enrolled.~~]

[~~(b) Collateral health benefits provided to a CHIP-eligible child under a different type of insurance, such as workers compensation or personal injury protection under an automobile policy, is not health insurance coverage for purposes of this section.~~]

(b) [~~(c)~~] The 90-day waiting period specified in paragraph (a) of this section does not apply to a child under the following circumstances:

(1) The child's budget group lost insurance coverage for the child because:

(A) The employment of a member of the Budget Group was terminated due to:

(i) a layoff;

(ii) a reduction-in-force; or

(iii) a business closure;

(B) Insurance benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) terminated;

(C) The marital status of a parent of the child has changed;

(D) The child's Medicaid eligibility was terminated because:

(i) the budget group's earnings or resources exceed allowable amounts for Medicaid eligibility; or

(ii) the child reached an age for which Medicaid benefits are no longer available; or

(E) Other circumstances similar to those described in this subparagraph that result in an involuntary loss of insurance coverage;

(2) The child had insurance coverage provided by [~~THKC,~~] ERS, [~~Laredo CHIP Pilot,~~] or CHIP in another state;

(3) The child's health insurance coverage costs more than 10 percent of the budget group's gross [~~net~~] monthly income; [~~or~~]

(4) The child has access to group-based health benefits plan coverage and will participate in the premium payment reimbursement program administered by the Commission; or

(5) [~~(4)~~] The Commission grants an exception to the waiting period under subsection [~~paragraph~~] (d) of this section.

(c) [~~(d)~~] The Commission may grant an exception to the 90-day waiting period prescribed by this section if it determines good cause exists to grant an exception and either:

(1) An applicant requests an exception:

(A) Prior to submission of an application;

(B) At the time of application; or

(C) As part of a request for review or reconsideration of a denial of eligibility under sections 370.52 or 370.54 of this chapter; or

(2) The Commission reaches a determination based either on information provided by an applicant or information obtained by the Commission.

§370.48. Completion of Application Process.

If the TexCare [~~TCP~~] application screening indicates:

(1) A child in the budget group appears to meet Medicaid income eligibility requirements, TexCare [~~TCP~~] sends the applicant a Medicaid Assets Letter to collect information about the budget group's assets and reviews the information returned by the family. If, following this review, the budget group's assets do not exceed Medicaid limits, TexCare [~~TCP~~]:

(A) electronically transfers the application to the Texas Department of Human Services (DHS) within one working day of the application completion date for a Medicaid eligibility determination;

(B) delivers the paper application to the appropriate DHS office within two additional working days; and

(C) notifies the applicant of potential Medicaid eligibility in writing with guidance regarding Medicaid's role for follow-up with the family.

(2) A child in the budget group does not meet one or more Medicaid eligibility requirements, the budget group's gross [~~net~~] income is at or below 200% of FPL, and the budget group meets all other CHIP eligibility requirements, TexCare [~~TCP~~]:

(A) Determines that the child is eligible for CHIP; and

(B) Notifies the applicant of the CHIP eligibility by letter and includes a CHIP enrollment packet.

~~[(3) A child in the budget group does not meet one or more Medicaid or CHIP eligibility requirements and the budget group's net budget group income exceeds 200% of FPL, TCP:]~~

~~[(A) electronically transfers the application to THKC within one working day of the application completion date; and]~~

~~[(B) Notifies the applicant in writing of the referral to THKC.]~~

§370.49. Medicaid Referrals.

If a TexCare [~~TCP~~] applicant child is referred to Medicaid and subsequently determined ineligible for Medicaid, Medicaid denies eligibility and may deem the child eligible for CHIP based on the budget group's income and/or assets, or the child's citizenship or immigration status.

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DIVISION 5. REVIEW AND RECONSIDERATION OF ELIGIBILITY DENIALS AND TEMPORARY ENROLLMENT

1 TAC §§370.51 - 370.54

The amendments are proposed under §62.051(d), Health and Safety Code, which authorizes the Commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the Commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The proposal implements §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.51. Deadline and method for requesting review of initial decision.

(a) An applicant may request a review of an initial CHIP decision described in section 370.50(a) within 30 working days from the date the applicant received written notice of the decision.

(b) An applicant may request a review by contacting TexCare [~~TCP~~] in writing.

§370.52. Disposition of request for review.

(a) TexCare [~~TCP~~] must complete its review of the initial decision within 10 working days of receipt of the request for review.

(b) TexCare [~~TCP~~] must notify the requester in writing of the results of its review of the initial decision not later than the 10th day following receipt of the request. The written notification must:

(1) explain the reason for the initial decision;

(2) inform the requester whether the initial decision was reversed following TexCare's [~~TCP's~~]review; and

(3) if the initial decision is upheld, inform the requester of its right to request reconsideration of the decision by HHSC if the requester disagrees with the decision and provide instructions for submitting a written request for reconsideration by HHSC.

§370.53. Request for reconsideration by HHSC.

(a) An applicant that is dissatisfied or disagrees with the result of TexCare's [~~TCP's~~] review of an initial decision may request reconsideration of the TexCare [~~TCP~~] review by HHSC.

(b) An applicant must request reconsideration by HHSC in writing within 20 working days from the date the applicant received the written notice of the result of the TexCare [~~TCP~~] review.

(c) Within 20 working days from the date TexCare [~~TCP~~] receives the written request for reconsideration, HHSC must complete the reconsideration and notify the applicant in writing of its final decision.

§370.54. Temporary enrollment pending disposition of review or reconsideration.

(a) There is no retroactive enrollment in CHIP.

(b) If an applicant's request for review by TexCare [~~TCP~~] of an adverse eligibility decision includes factual information that could have an impact on the decision, TexCare [~~TCP~~] will approve temporary enrollment of the child pending completion of the review and/or reconsideration by HHSC of the eligibility decision.

(c) A child will remain enrolled until the TexCare [~~TCP~~] review and/or HHSC reconsideration process is complete.

(d) If the initial eligibility decision is reversed, the child's 6 [~~12~~] months of eligibility continues. If the review/reconsideration confirms the initial decision of ineligibility, the child is disenrolled as of the next cut-off date.

(e) TexCare [~~TCP~~] will not approve temporary enrollment if the applicant's request for review/reconsideration includes no factual basis for reversing the initial eligibility decision.

(f) TexCare [~~TCP~~] may approve temporary enrollment for a child on the basis of a review only once every 6 [~~12~~] months.

(g) If a child who is temporarily enrolled under this section ultimately is determined ineligible for CHIP, no repayment for health care costs during the period of temporary enrollment will be sought by TexCare [~~TCP~~] or HHSC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. ENROLLMENT, DISENROLLMENT, AND RENEWAL OF MEMBERSHIP

DIVISION 1. TEXCARE ENROLLMENT

1 TAC §§370.301, 370.303, 370.305, 370.307, 370.309

The new rules are proposed under §531.033, Government Code, which authorizes the commissioner of health and human services to adopt rules necessary to carry out HHSC's duties under Chapter 531; under §62.051(d), Health and Safety Code, which directs HHSC to adopt rules necessary to implement Chapter 62, Health and Safety Code, concerning CHIP; and under §2001.006, Government Code, which allows state agencies to adopt rules in preparation for the implementation of legislation.

No other statutory provisions are affected by the proposed rules.

§370.301. CHIP Enrollment Packet.

Within 5 business days of determining a child is CHIP eligible, TexCare must send the applicant a CHIP enrollment packet containing:

(1) an explanation of CHIP benefits;

(2) a comparison chart of the value-added services provided by health plans in areas where there is a choice of health plans;

(3) an enrollment form and instructions for completing the form;

(4) a provider directory for each health plan available in the applicant's CHIP Service Area (CSA);

(5) a health plan member guide;

(6) cost-sharing information specific to the budget group's Federal Poverty Level (FPL), which includes:

(A) the monthly premium amount, if any;

(B) a schedule of co-payments, if any (e.g., Native Americans have no cost-sharing)

(C) a form to help the applicant track the cost-sharing expenditures relative to the member's cost-sharing cap; and

(D) the disenrollment process for non-payment of monthly premiums

(7) the process for requesting review by TexCare of an unfavorable eligibility or enrollment decision or filing a complaint or an appeal of an adverse determination with the member's Health Maintenance Organization (HMO) or Exclusive Provider Organization (EPO) plan; and

(8) a flyer that specifies the date by which the completed enrollment form must be received by TexCare to ensure enrollment on the first day of the following month and that summarizes the importance of appropriate health plan and Primary Care Provider (PCP) choices for applicants who live in CSAs covered by more than one HMO.

§370.303. Completion of Enrollment Process.

(a) To complete the enrollment process in a CSA with health plan choice, an applicant must:

(1) select and indicate on the enrollment form, a single health plan to cover all eligible children, regardless of the number of eligible children in the budget group;

(2) select a PCP and place the name on the enrollment form; and

(3) sign and return the enrollment form to TexCare.

(b) To complete the enrollment process in a CSA without health plan choice, an applicant must sign and return the enrollment form and select a PCP.

(c) An applicant may return the enrollment form to TexCare either by mail, in the postage paid envelope enclosed with the enrollment packet, or by facsimile.

(d) If an applicant who lives in a CSA covered by an HMO fails to choose a PCP, or if the chosen PCP is not accepting new members, the health plan must assign a PCP to each member in the budget group and inform the applicant. The health plan will send the member a health plan identification card by

(e) The enrollment process is closed 90 calendar days after a child is determined eligible for CHIP if the applicant has not completed the enrollment process. An applicant who fails to complete the enrollment process must initiate a new application for CHIP.

§370.305. Children with Complex Special Health Care Needs (CCSHCN).

The enrollment process for an eligible child with complex special health care needs is the same as described in section 370.303 of this subchapter, except for the addition of the following:

(1) based on the criteria identified in the member guide, which is sent as part of the enrollment packet, an applicant may indicate on the enrollment form that an eligible child has special health care needs;

(2) TexCare will notify each HMO and EPO of members identified through the enrollment process as having complex special health care needs;

(3) within 10 business days of the effective date of coverage, each HMO and EPO will contact each member identified on the enrollment form as having complex special health care needs to confirm his or her health care needs status; and

(4) each HMO and EPO will notify TexCare of members who are not confirmed as having complex special health care needs.

§370.307. Continuous Enrollment Period.

CHIP enrollment always begins on the first calendar day of the month and continues for 6 consecutive months unless:

(1) a sibling member in the home has an earlier initial date of coverage, in which case the coverage period for the newly enrolled child will be the remaining period of coverage of the already enrolled sibling; or

(2) one of the circumstances described in section 370.341, concerning reasons for disenrollment, occurs.

§370.309. Incomplete or Missing Information.

(a) Fourteen calendar days after the enrollment packet is mailed, TexCare sends a reminder notice to applicants who have failed to:

(1) sign the enrollment form; or

(2) return the enrollment form or complete it properly.

(b) If the applicant does not respond to the initial reminder notice, TexCare sends a second reminder notice 14 calendar days after the date of the initial reminder notice.

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General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 424-6576

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DIVISION 2. COST-SHARING REQUIREMENTS

1 TAC §§370.321, 370.323, 370.325

The new rules are proposed under §531.033, Government Code, which authorizes the commissioner of health and human services to adopt rules necessary to carry out HHSC's duties under Chapter 531; under §62.051(d), Health and Safety Code, which directs HHSC to adopt rules necessary to implement Chapter 62, Health and Safety Code, concerning CHIP; and under §2001.006, Government Code, which allows state agencies to adopt rules in preparation for the implementation of legislation.

No other statutory provisions are affected by the proposed rules.

§370.321. Cost-Sharing Requirements.

Cost-sharing requirements are based on a budget group's percentage of FPL. Except for costs associated with unauthorized, non-emergency services provided to a member by out-of-network providers, the co-payments and deductibles identified in this section are the only amounts a provider may collect from a member.

(1) General cost-sharing requirements. A member may be required to pay any of the following costs of CHIP coverage:

(A) a monthly premium; and

(B) co-payments.

(2) Basic cost-sharing obligations. The Health and Human Services Commission (HHSC) determines the cost sharing amounts a member may be required to pay for enrollment in and services provided through CHIP. When determining cost sharing charges, HHSC will solicit public input by publishing proposed cost-sharing amounts and requesting comments. Cost sharing may be determined based on the maximum levels authorized under federal law and applied to income levels so as to minimize administrative costs.

(3) Monthly premium. Monthly premiums are due the first calendar day of each month and are applicable to that month's coverage. Premiums may be prepaid up to the total amount due for a coverage year.

§370.323. Cost-Sharing Exemptions.

(a) American Indian and Alaska Native children are exempt from cost-sharing obligations, as defined in 42 C.F.R. §457.10.

(b) TexCare notifies each health plan regarding members who are exempt from cost-sharing.

(c) Co-payments do not apply, at any income level, to preventive health services, such as well-child or well-baby care visits and immunizations.

(d) A member's exemption from cost sharing is noted on the member's Health Plan Member Identification Card.

§370.325. Annual Cost-Sharing Cap.

(a) There is an annual cost-sharing cap based on the budget group's percentage of FPL. The applicant is responsible for tracking the member's cost-sharing expenditures on the form provided by TexCare and advising TexCare when the cap is reached. TexCare is responsible for:

(1) computing and informing the applicant at enrollment of the amount of their cost-sharing cap;

(2) providing the applicant with a form for keeping track of their co-payments and monthly premiums;

(3) notifying the affected health plan within two business days of a member's reaching the cost-sharing cap; and

(4) informing the Health and Human Services Commission that an applicant is owed a premium refund in the form of a warrant issued by the State Comptroller's Office, if the applicant notifies TexCare that the applicant has exceeded his or her cost-sharing cap and a monthly premium has been received from the applicant that is in excess of the cost-sharing cap.

(b) A budget group with gross income at or below 150% of FPL has a cost-sharing cap of 2.5% of its gross income during the 6-month coverage period.

(c) A budget group with gross income greater than 150% of FPL has a cost-sharing cap equal to 5% of its gross income during the 6-month coverage period.

(d) On notification by TexCare that a member has reached the cost-sharing cap, a health plan will issue a new Health Plan Member Identification Card reflecting the absence of a co-payment requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

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Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 424-6576

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 5. FUEL QUALITY

4 TAC §5.6

The Texas Department of Agriculture (the department) proposes amendments to Chapter 5, Fuel Quality, §5.6, concerning motor fuel testing fees. The amendments to §5.6 are proposed to increase the fees collected for the purpose of enforcing and administering the department's motor fuel testing program. The amendments are further proposed to ensure that costs associated with the administration of the department's fuel quality program are recovered, as directed by the Texas Legislature, 78th Session, 2003.

David Kostroun, Assistant Commissioner for Regulatory Programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section. There will be an approximate increase in state revenue of $98,653 per year, beginning in fiscal year 2004, due to the increase in motor fuel testing fees. There will be no anticipated cost to local government as a result of enforcing or administering the amended section.

Mr. Kostroun has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing or administering the amended section will be that costs of implementing the motor fuel testing program will be recovered. The anticipated economic cost to those individuals, micro businesses and small businesses affected by the proposed amended section will be an increase of $0.40 for each liquid measuring device designed to dispense one gasoline product per nozzle and an increase of $1.25 for each liquid measuring device designed to dispense multiple gasoline products per nozzle.

Comments on the proposal may be submitted to Stephen Pahl, Coordinator for Weights and Measures, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §5.6 are proposed under Article 8614, Vernon's Texas Civil Statutes, §9, which provides the department with authority to adopt rules necessary for the regulation of the sale of motor fuels and to impose a fee for testing, inspection or performance of other services necessary for administration of Article 8614.

The code that will be affected by the proposal is Article 8614, Vernon's Texas Civil Statutes.

§5.6. Fees.

(a) (No change.)

(b) Motor fuel fee amount.

(1) The fee is $2.50 [~~$2.10~~] per liquid measuring device used to deliver one gasoline product per nozzle.

(2) The fee is $7.50 [~~$6.25~~] per liquid measuring device used to deliver multiple gasoline products per nozzle.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303532

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 463-4075

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CHAPTER 6. SEED ARBITRATION

4 TAC §6.4

The Texas Department of Agriculture (the department) proposes an amendment to §6.4, concerning the seed arbitration filing fee under the Texas Arbitration Law. The amendment to §6.4 is proposed to increase the seed arbitration filing fee by 20%. The fee increased by this proposal has not been increased by the department since 1997. The proposed fee increase will allow the department to recover some of its costs associated with arbitration, as directed by the Texas Legislature, 78th Session, 2003. The proposed amendment increases the seed arbitration filing fee from $250 to $300.

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five-year period the amended section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section. There will be an approximate $500.00 increase in state revenue per year due to the increase in the filing fee. There is no anticipated affect on local government as a result of enforcing of administering the amended section.

Mr. Kostroun also has determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be that additional costs of implementing seed arbitration will be recovered. For the first five-year period the amended section is in effect, the anticipated economic cost to individuals, microbusinesses or small businesses who are required to comply with the amended section will be a cost of increase of from $250 to $300 for the filing of a seed arbitration complaint.

Comments on the proposal may be submitted to Kelly Book, Seed Quality Branch Chief, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code, §64.006, which provides the Texas Department of Agriculture with the authority to set and collect a filing fee for the filing of a seed arbitration complaint.

The Texas Agriculture Code, Chapter 64, is affected by the proposal.

§6.4. Cost of Arbitration.

(a) Arbitration filing fee. A nonrefundable filing fee of $300[~~$250~~] shall accompany the sworn complaint and must be sent to the Texas Department of Agriculture, P. O. Box 629, Giddings, Texas 78942. If the board recommends to award damages to the complainant, the filing fee may be included in the arbitration costs assessed to the responsible party.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2003.

TRD-200303545
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 9. SEED QUALITY

The Texas Department of Agriculture (the department) proposes amendments to §§9.2-9.3 and §§9.4-9.5, concerning seed quality licensing fees, testing fees and tolerances for prohibited noxious weeds under the Texas Seed Law. The amendments to are proposed to increase seed quality licensing fees and testing fees by a minimum of 20%. The fees increased by this proposal have not been increased by the department since 1986. The proposed increase in fees will allow the department to recover some of its costs associated with seed testing, as directed by the Texas Legislature, 78th Session, 2003. The proposed amendments to §9.2 increase the cost of Texas Tested Seed Labels from $.03 to $.07 per 100 pounds of seed or fraction thereof and increases the inspection fee for same from $.06 to $.07. The proposed amendment to §9.3 increases the fee for a vegetable seed license from $100 to $120. The proposed amendments to §9.4 disallow a tolerance in enforcement of the prohibited noxious weeds; castor, field bindweed, hedge bindweed and tropical soda apple. The amendment will allow for increased enforcement thereby promoting higher quality seed for consumers. The amendments to §9.5 increase service testing fees, and clarify that testing fees are charged on a per sample component basis.

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five-year period the amended sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended sections. There will be an approximate $110,719 increase in revenue per year beginning in fiscal year 2004, due to the increase in the licensing fees and testing fees. There will be no fiscal implications to local government as a result of enforcing or administering the amended sections.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the amended section will be that additional costs for implementing the seed quality programs will be recovered. For the first five-year period the rules are in effect, the anticipated economic cost to individuals, microbusinesses or small businesses who are required to comply with the rules as proposed will be a cost of increase of approximately 20 percent per year for related seed law services.

Comments on the proposal may be submitted to Kelly Book, Seed Quality Branch Chief, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

SUBCHAPTER B. CLASSIFICATION OF LICENSES

4 TAC §9.2, §9.3

The amendments to §§9.2 and 9.3 are proposed under the Texas Agriculture Code (the Code), §61.002, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement of the Code, Chapter 61;; the Code §61.011, which provides the department with the authority to set and collect a fee for purchase of Texas Tested Seed Labels, and for an inspection of seed; and §61.013, which provides the department with the authority to set and collect a fee for issuance of a vegetable seed license.

The Texas Agriculture Code, Chapter 61, is affected by the proposal.

§9.2. Agricultural Seed.

(a) (No change.)

(b) Texas Tested Seed Label. When an inspection fee is paid by means of a Texas Tested Seed Label, the person who distributes, sells, offers for sale, or exposes for sale agricultural seed shall:

(1) purchase the Texas Tested Seed Labels from the department at a cost of $.07 [~~$.03~~] for each 100- pound container of seed or fraction thereof; and

(2) (No change.)

(c) Reporting system. When an inspection fee is paid by means of the reporting system, the following shall apply.

(1)-(2) (No change.)

(3) The permittee shall pay an inspection fee of $.07 [~~$.06~~] for each 100 pounds of agricultural seed sold or otherwise distributed for sale for planting purposes within the state.

(4)-(7) (No change.)

(8) The penalty for a late filing of quarterly reports shall be $30 [~~$25~~] or 10% of the amount of the fee due, whichever is greater.

§ 9.3. Vegetable Seed.

(a) (No change.)

(b) A person desiring a Vegetable Seed License shall submit to the department an "Application for Vegetable Seed License" form prescribed by the department accompanied by a license fee in the amount of $120 [~~$100~~].

(c)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303574
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER C. SEED TESTING

4 TAC §9.4, §9.5

The amendments to §§9.4 and 9.5 are proposed under the Texas Agriculture Code (the Code), §61.002, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement of the Code, Chapter 61; the Code §61.011, which provides the department with the authority to set and collect a fee for purity and germination testing.

The Texas Agriculture Code, Chapter 61, is affected by the proposal.

§9.4. Procedures and Tolerances.

The Texas Department of Agriculture hereby adopts by reference Rules for Testing Seeds of the Association of Official Seed Analysts, as to procedures, methods, and tolerances for seed testing, except that in enforcement, no tolerance will be allowed for balloonvine, castor, field bindweed, hedge bindweed, itchgrass, serrated tussock, or tropical soda apple [~~serrated tussock, or itchgrass~~]. A tolerance of one will be allowed for cocklebur. A tolerance of one will be allowed for nutsedge tubers in a two pound sample. If nutsedge tubers are found in excess of the tolerance, an additional 50 pounds will be required for testing. The tolerance of one nutsedge tuber will be allowed in the 50 pound sample. The tolerance allowed for pure live seed will be the same as for germination. A laboratory test used for labeling purposes must be made by the Texas Department of Agriculture, the official state seed laboratory of another state, or a Registered Seed Technologist/Society of Commercial Seed Technologist member laboratory. Information relative to obtaining copies of the material adopted by reference may be obtained by writing the Texas Department of Agriculture, Seed Quality Program, P. O. Box 629, Giddings, Texas 78942. A copy is also available for public inspection at the Texas Department of Agriculture, Seed Quality Program, W. H. (Bill) Pieratt Building, Giddings, Texas.

§9.5. Service Testing Fees.

(a) The following schedule of tests and charges therefore shall be applicable to all service testing of agricultural seed, vegetable seed, and flower seed conducted by the department:

(1) standard germination test only: $9.00 each component [~~$7.50 each~~];

(2) standard purity test only: $9.00 each component [~~$7.50 each~~];

(3) standard germination and/or purity test only containing inert matter in excess of 5 percent: $12, $9.00 for each additional component [~~mixtures or seed containing high inert matter: $9.50 each~~];

(4) complete test (purity and germination): $18, $9.00 for each additional component [~~$15 each~~];

(5) complete test (purity and germination) [~~for mixtures or seed~~] containing [~~high~~] inert matter in excess of 5%: $21, $9.00 for each additional component[~~: $17 each~~];

(6) standard germination test on grasses and/or flowers: $15 each component [~~$12.50 each~~];

(7) standard purity test on grasses and/or flowers: $15 each component [~~$12.50 each~~];

(8) complete test on grasses and/or flowers: $30, $15 for each additional component [~~$25 each~~];

(9) Texas noxious weed examination only: $5.00, $4.00 for each additional state or foreign country, all state noxious weed exams: $20 each [~~$4.00 each~~];

(10) vigor test: $12 each component [~~$9.50 each~~];

(11) tetrazolium or phenol test: $15, each component [~~$11 each~~];

(12) examination- 10-pound rice seed sample for presence of red rice: $15 [~~$11~~] each;

(13) moisture test: $7.50 [~~$6.00~~] each;

(14) fescue endophyte test: $30 [~~$25~~] each;

(15) sorghum ergot examination: $5.00 [~~fluorescence test: $4.00~~] each;

(16) seed count: $7.50 [~~flower: $25~~] each [~~; and~~] .

[~~(17) grasses and flower mixed: $50 each.~~]

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 10. SEED CERTIFICATION STANDARDS

The Texas Department of Agriculture (the department) and the State Seed and Plant Board (the Board) propose amendments to §10.2, §10.3, §10.5, §10.8, §10.10, §10.11, §10.13, §10.21 and §10.22, concerning seed certification. The amendments are proposed to increase fees for certification, to modify existing language in §10.8 to conform to statutory language, and to include in §10.13 the category of "other kinds not listed" and the previously excluded kind "cantaloupe" which was inadvertently left out of the 2001 amendments. The department is the certifying agency in the administration of the Seed and Plant Certification Act, and is charged with administering and enforcing the standards adopted by the Board. The fees increased by this proposal have not been increased by the department since 1987. The increase in fees will allow the department to recover costs associated with enforcing the standards adopted by the Board, as directed by the Texas Legislature, 78th Session, 2003. The proposed amendment to §10.2 increases the fee for interagency certification from $75 to $100 per lot. The proposed amendment to §10.3 increases the license fee for Registered Plant Breeders from $100 to $120. In addition to the proposed changes to §10.5 noted previously, the proposed amendments to §10.5 change both the amount paid as a late fee for an application for field inspection and the fee for reinspection from $20 to $25. The proposed amendments to §10.8 change the terminology and inspection requirements for seed processing to conform with current state and federal law. The proposed amendment to §10.10 changes the cost of certification labels from $.08 to $.10 each. The proposed amendment to §10.11 changes the bulk sales certificate fee from $.08 to $.10 per one hundred pounds or fraction thereof, the agricultural seed inspection fee from $.06 to $.07 per one hundred pounds or fraction thereof, and the reporting system fee from $.03 to $.07 per hundred pounds or fraction thereof. The proposed amendment to §10.13 increases the inspection fees for certification by 20%. The proposed amendments to §§10.21 and 10.22 increase the fee for sample testing for reconsideration from $50 to $60.

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five-year period the amended sections are in effect, there will be fiscal implications

for state government as a result of enforcing or administering the amended sections. There will be an approximate $145,376.00 increase in state revenue per year due to the increase in the certification fees. There is no anticipated fiscal implication for local government as a result of enforcing or administering the amended sections.

Mr. Kostroun also has determined that for each year of the first five years the amended sections are in effect the public benefit anticipated as a result of enforcing the rules will be a plentiful supply of genetically certified planting seed and the recovery of some costs related to administering the seed certification program. For the first five-year period the rules are in effect, the anticipated economic cost of to individuals, microbusinesses, and small businesses who are required to comply with the rules as proposed will be a cost of increase of approximately 20% per year for certification related services.

Comments on the proposal may be submitted to Kelly Book, Seed Quality Branch Chief, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL REQUIREMENTS

4 TAC §§10.2, 10.3, 10.5, 10.8, 10.10, 10.11

The amendments to §10.2, §10.3, §10.5, §10.8, §10.10, and §10.11 are proposed under the Texas Agriculture Code (the Code), §61.011, which provides the department wit the authority to set and collect a fee for an agricultural seed inspection; the Code, §62.002, which provides the Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest; the Code, §62.006, which authorizes the Board to set and charge a fee for registration of plant breeders; and the Code §62.008, which provides the department with the authority to charge fees for issuance of a certification label, in an amount necessary to cover costs of inspection and labels.

The Texas Agriculture Code, Chapters 61 and 62, are affected by the proposal.

§10.2. Eligibility of Varieties.

(a) Interagency certification as allowed by the Federal Seed Act.

(1) (No change.)

(2) A $100 [~~$75~~] fee will be assessed and must be paid for each lot of seed on which interagency certification is requested.

(3)-(4) (No change.)

(b)-(c) (No change.)

§10.3. Approval of Applicant under Certification.

(a) An applicant for licensing as a "Registered Plant Breeder" or a "Certified Seed Grower" as provided in the Act, shall be a person, firm, or corporation of good character and have a reputation for honesty, competency and fair dealing. All applicants for a Registered Plant Breeder license shall pay a fee of $120 [~~$100~~] at the time of application.

(b)-(c) (No change.)

§10.5. Application for Field Inspection.

(a) (No change.)

(b) A late fee of $25 [~~$20~~] will be assessed and must be paid for each field on which certification is requested after the deadline date established for each specific crop. Applications will not be accepted if it can be determined by the certifying agency that the crop is too far advanced in development to allow satisfactory inspection.

(c)-(d) (No change.)

(e) The applicant may request reinspection of a rejected field provided the cause for rejection can be corrected and provided he/she again submits an inspection fee for the acreage involved. In no case will the reinspection fee be less than$25 [~~$20~~]. Request for reinspection of a rejected field will not be accepted if it can be determined that the inspector will not be able to visit the field in sufficient time before harvest to make a satisfactory inspection.

§10.8. Harvesting, Processing, and Storing.

(a) Care must be exercised in harvesting to avoid admixing of the variety in harvesting equipment and in the transporting vehicle. The applicant must see that this equipment is thoroughly cleaned in order to safeguard the purity of the seed. Identity of the seed must be maintained at all times. Certified seed must be conditioned at a processing facility [~~by a conditioning plant~~] that has been approved by the department.

(b) A seed processing facility owned by a person who owns or produces a certified seed variety is subject to inspection by the department during normal business hours. Inspection of the facility includes access to any records or physical areas necessary to show compliance with seed processing requirements. Failure to permit inspection of the facility shall be grounds for denial of certification for any seed lots for which certification labels are requested and for which the department has determined an inspection is required to ensure compliance with certification standards. If a person who owns or produces a certified seed variety uses a seed processing facility not owned by the person, the person shall, prior to receiving certification labels, file with the department a copy of a processing contract between the person and the owner of the seed processing facility that contains provisions which impose a duty on the owner of the seed processing facility to comply with state and federal certification standards, including these rules, when processing the person's seed and which impose a duty on the owner of said facility to permit the same department inspection activities that are required for processing facilities owned by an owner or producer of a certified seed variety. The contract must be signed and dated by both the owner or producer of the certified seed variety and the owner, or owner's authorized agent, of the seed processing facility. Exemplars of acceptable contract provisions may be obtained from the department upon request. The owner or producer of a certified seed variety is responsible for ensuring that seed processing requirements are met and access to processing facilities for inspection granted to department personnel. Should a third party processor fail to meet the requirements or refuse inspection, the owner or producer of the certified seed variety shall be denied certification for any seed lots for which certification labels are requested and for which the department has determined an inspection is required to ensure compliance with certification standards. [~~Any person, firm, or corporation desiring to become an approved certified seed handler shall make application to the Seed Quality Program for inspection and approval of the seed conditioning facilities. Application for approval must be made each calendar year. Inspection of the facilities by an approved inspector of the certifying agency shall be made in determining approval or rejection. Forms supplied by the Seed Quality Program are required to be used. When a seed conditioning plant has been inspected and meets all requirements, a certificate of approval will be issued by the certifying agency. Thereafter, the facilities are subject to inspection at the discretion of the certifying agency~~].

(c) Facilities shall be capable of performing seed processing[~~conditioning~~] without introducing admixtures.

(d) When different classes of certified seed, or when certified seed and noncertified seed of the same variety or when two or more varieties of the same kind are handled, adequate precautions shall be taken so as to prevent contamination and to maintain the identity of each seed lot. All equipment used in seed processing[~~conditioning~~] must be thoroughly cleaned before any eligible seed is handled. Identity of seed must be maintained at all times.

(e) Records of all operations relating to certification shall be complete and adequate to account for all incoming seed and final disposition of seed. [~~Seed conditioners shall permit inspection by the department of all records pertaining to certified seed.~~]

(f) Prior to reprocessing seed bearing the certification labels, an approved inspector must supervise the removal of said labels which are to be surrendered to the inspector. [~~Seed conditioners shall designate an individual who shall be responsible to the Seed Quality Program for performing such duties as it may require~~].

(g) Seed lots of the same variety and class may be blended and the class retained. If lots of different classes are blended, the lowest class shall be applied to the resultant blend. Such blending can only be done when authorized by the Seed Quality Program. The blend is a new lot which shall be sampled and tested in compliance with the commodity standards[~~Prior to reconditioning seed bearing the certification labels, an approved inspector must supervise the removal of said labels which are to be surrendered to the inspector~~].

[~~(h) Seed lots of the same variety and class may be blended and the class retained. If lots of different classes are blended, the lowest class shall be applied to the resultant blend. Such blending can only be done when authorized by the Seed Quality Program. The blend is a new lot which shall be sampled and tested in compliance with the commodity standards~~].

§10.10. Labels.

(a)-(h) (No change.)

(i) The cost of certification labels shall be $.10 [~~$.08~~] each, or $.10 [~~$.08~~] for each 100 pounds or fraction of 100 pounds of seed. The type of labels available are:

(1) foundation, registered, and certified labels;

(2) Organization for Economic Cooperation and Development (OECD) certified labels;

(3) Pressure sensitive labels;

(4) gum labels.

§10.11. Bulk Sales.

(a) (No change.)

(b) Bulk sales are authorized as follows.

(1) (No change.)

(2) It is the seller's responsibility to:

(A)-(G) (No change.)

(H) pay the necessary Bulk Sales Certificate fee ($.10[~~$.08~~] per one hundred pounds , or fraction of one hundred pounds of seed,) and Agricultural Seed Inspection Fee ($.07[~~$.06~~] per one hundred pounds ,or fraction of one hundred pounds of seed, if on the reporting system or $.07[~~$.03~~] per one hundred pounds ,or fraction of one hundred pounds of seed, if using seed fee labels).

(3)-(5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER C. ACREAGE INSPECTION FEES FOR CERTIFICATION

4 TAC §10.13

The amendments to §10.13 are proposed under the Texas Agriculture Code (the Code), §61.011, which provides the department wit the authority to set and collect a fee for an agricultural seed inspection; the Code, §62.002, which provides the Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest; and the Code, §62.008, which provides the department with the authority to charge fees for issuance of a certification label, in an amount necessary to cover costs of inspection and labels.

The Texas Agriculture Code, Chapters 61 and 62, are affected by the proposal.

§10.13. Inspection Fees for Certification.

The following chart designates fees per acre for various crop kinds as required for seed certification.
Figure: 4 TAC §10.13.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER F. ADDITIONAL REQUIREMENTS FOR THE CERTIFICATION OF CERTAIN CROPS

4 TAC §10.21, §10.22

The amendments to §§10.21 and 10.22 are proposed under the Texas Agriculture Code (the Code), §61.011, which provides the department wit the authority to set and collect a fee for an agricultural seed inspection; the Code, §62.002, which provides the Board with the authority to establish standards of genetic purity

and identity as necessary for the efficient enforcement of agricultural interest; and the Code, §62.008, which provides the department with the authority to charge fees for issuance of a certification label, in an amount necessary to cover costs of inspection and labels.

The Texas Agriculture Code, Chapters 61 and 62, are affected by the proposal.

§10.21. Requirements and Standards for Hybrid Sorghum Varietal Purity Grow-outs.

(a) Test planting requirements.

(1)-(2) (No change.)

(3) A fee of $60 [~~$50~~] for each sample grown for reconsideration must be paid to the Texas Department of Agriculture, and the travel and per diem expenses of department personnel necessary to sample, plant, and inspect the larger plot must be paid by the seed producer.

(4) (No change.)

(b) (No change.)

§10.22. Requirements and Standards for Sunflower Varietal Purity Grow-outs.

(a)-(b) (No change.)

(c) A fee of $60[~~$50~~] for each sample grown for reconsideration must be paid to the Texas Department of Agriculture, and the travel and per diem expenses of department personnel necessary to sample, plant, and inspect the larger plot must be paid by the seed producer.

(d)-(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 12. WEIGHTS AND MEASURES
SUBCHAPTER B. DEVICES

4 TAC §12.12

The Texas Department of Agriculture (the department) proposes amendments to Chapter 12, Weights and Measures, Subchapter B, Devices, §12.12, concerning fees charged to businesses who operate weights and measures devices. The amendments to §12.12 are proposed to increase the fees charged to register weights and measures devices with the department. The amendments are further proposed to ensure that costs associated with the administration of the department's weights and measures regulatory activities are recovered as required by the Texas Agriculture Code, §12.0144, and directed by the Texas Legislature, 78th Session, 2003.

David Kostroun, Assistant Commissioner for Regulatory Programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government due to the increase in device registration fees. There will be an approximate increase in state revenue of $625,566 per year, beginning in fiscal year 2004, as a result of enforcing or administering the amended section. There will be no anticipated cost to local government as a result of enforcing or administering the amended section.

Mr. Kostroun has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing or administering the amended section will be that costs of implementing the weights and measures program will be recovered. The anticipated economic cost to those individuals, micro businesses and small businesses affected by the proposed amended section will be a 20% increase to the fee for each weights and measures device registered with the department.

Comments on the proposal may be submitted to Stephen Pahl, Coordinator for Weights and Measures, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §12.12 are proposed under the Texas Agriculture Code (the Code), §13.002, which provides the department with authority to adopt rules necessary for the enforcement and administration of the department's Weights and Measures Program; and the Code, §13.1151, which provides the department with the authority to set by rule and charge a fee for the registration of a pump, scale, bulk or liquefied petroleum gas metering device required under §13.1011 of the Code.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.12. Fees.

Except as provided by Chapter 2, Subchapter B of this title (relating to Consolidated Licenses), fees for weights and measures device registrations are as follows:

(1) Liquid measuring device (or pump), maximum flow rate 20 gallons per minute or less, dispensing one product per nozzle: $8.50 [~~$7.00~~] (per nozzle).

(2) Liquid measuring device (or pump), maximum flow rate 20 gallons per minute or less, dispensing multiple products per nozzle: $25 [~~$21.00~~] (per nozzle).

(3) Liquid measuring device (or bulk meter), maximum flow rate greater than 20 gallons per minute: $30 [~~$25~~] (per nozzle).

(4) LPG meter: $30 [~~$25~~].

(5) Scale (capacity less than 5,000 pounds): $15 [~~$12.50~~].

(6) Ranch Scales: $15 [~~$12.50~~].

(7) Truck Scales and other large scales (capacity 5,000 pounds or greater): $120 [~~$100~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER D. METROLOGY

4 TAC §12.30

The Texas Department of Agriculture (the department) proposes amendments to Chapter 12, Weights and Measures, Subchapter D, Metrology, §12.30, concerning fees charged for metrology services. The amendments are proposed to increase fees charged for metrology services. The amendments are further proposed to recover costs of administration of the departments metrology program, in accordance with Texas Agriculture Code, §12.0144, and the directive of the Texas Legislature, 78th Session, 2003.

David Kostroun, Assistant Commissioner for Regulatory Programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section. There will be an approximate increase in state revenue of $176,935.00 per year due to the increase in fees for tolerance testing. There will be no anticipated cost to local government as a result of enforcing or administering the amended section.

Mr. Kostroun has also determined that for the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing or administering the amended section will be that costs of implementing the metrology program will be recovered. The anticipated cost to individuals, micro businesses and small businesses that will be required to comply with the amended section is an increase in precision testing fees as follows; from $25 per weight to $40 per weight for weights up to and including 3 kilograms, from $50 per weight to $80 per weight for weights more than 3 kilograms, up to and including 30 kilograms, from $70 per weight to $100 per weight for weights more than 30 kilograms. The anticipated cost to individuals, micro businesses and small businesses that will be required to comply with the amended section is an increase in tolerance testing fees as follows; from $5 per weight to $10 per weight for weights less than 10 pounds, from $10 per weight to $20 per weight for weights 10 pounds or more but less than 500 pounds, from $20 per weight to $40 per weight for weights 500 pounds or more but less than 2,500 pounds, from $40 per weight to $80 per weight for weights 2,500 pounds or more. The anticipated cost to individuals, micro businesses and small businesses that will be required to comply with the amended section is an increase in volume measure testing fees as follows; from $20 per measure to $40 per measure for liquid measures 5 gallons or less, from $20 plus $0.50 for each gallon over 5 gallons to $40 plus $0.50 for each gallon over 5 gallons for liquid measures more than 5 gallons, from $25 to $100 for liquefied petroleum gas (LPG) provers 25 gallons or less, from $100 to $250 for liquefied petroleum gas (LPG) provers over 25 gallons. The anticipated cost to individuals, micro businesses and small businesses that will be required to comply with the amended section is an increase in tapes, rules, glassware or other standards per increment testing fees as follows; from $25 per increment to $50 per increment.

Comments on the proposal may be submitted to Patrick Forester, Coordinator for Metrology, P.O. Box 1518, Giddings, Texas 78942 and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §12.30 are proposed under the Texas Agriculture Code (the Code), §13.002 which provides the department with the authority to adopt rules necessary for the enforcement and administration of the department's Weights and Measures program; and the Code, §13.115(c) and (d), which provide the department with the authority to set and charge a fee for the testing of a weight or measure by the department's metrology laboratory.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 13, Subchapter D.

§12.30. Metrology Services.

(a) (No change.)

(b) Metrology services are available based on the following fee schedule:

(1) Weights.

(A) Precision Test. NIST Class "A, B, S, S-1, M[~~,~~ ~~J~~],"; ASTM Class "0,1, [~~1.1,~~] 2, 3"; OIML Class "E1, E2, F1, F2" and other weights: up to and including [~~Not more than~~] 3 kilograms: $40 [~~$25~~]; More than 3 kilograms, up to and including [~~but not more than~~] 30 kilograms: $80 [~~$50~~]; More than 30 kilograms: $100 [~~$70~~].

(B) Tolerance Test. NIST Class "P, Q, T, C, F"; ASTM Class "4, 5, 6, 7"; OIML Class "M1, M2, M3"; and other weights: Less than 10 pounds: $10 [~~$5~~]; 10 pounds or more but less than 500 pounds: $20 [~~$10~~]; 500 pounds or more but less than 2500 pounds: $40 [~~$20~~]; 2500 pounds or more: $80 [~~$40~~].

(2) Volume Measures: 5 gallons or less: $40 [~~$20~~]; More than 5 gallons: $40 [~~$20~~] plus $0.50 [~~$.50~~] for each gallon over 5 gallons; LPG provers holding 25 gallons or less: $100 [~~$25~~]; LPG provers holding over 25 gallons: $250 [~~$100~~].

(3) Tapes, rules, glassware, or other standards per increment tested: $50 [~~$25~~].

[~~(c) The metrology fees established in subsection (b)(1)(B) and (b)(2) of this section shall apply to any and all testing performed after August 31, 2001.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER E. LICENSED SERVICE COMPANIES

4 TAC §12.43

The Texas Department of Agriculture (the department) proposes amendments to Chapter 12, Weights and Measures, Subchapter E, Licensed Service Companies, §12.43, concerning fees charged to businesses who employ registered technicians to

place weights and measures devices into service or remove out-of-order tags. The amendments to §12.43 are proposed to increase the fees charged to license a weights and measures service company with the department. The amendments are further proposed to ensure that costs associated with the administration of the department's weights and measures regulatory activities are recovered as required by the Texas Agriculture Code, §12.0144 and directed by the Texas Legislature, 78th Session, 2003.

David Kostroun, Assistant Commissioner for Regulatory Programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section. There will be an approximate increase in state revenue of $4,725 per year beginning in fiscal year 2004 due to the increase in licensed service company registration fees. There will be no anticipated cost to local government as a result of enforcing or administering the amended section.

Mr. Kostroun has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing or administering the amended section will be that costs of implementing the weights and measures program are recovered. The anticipated economic cost to those individuals, micro businesses and small businesses employing registered technicians required to comply with the amended section is a $15.00 increase to each class of license.

Comments on the proposal may be submitted to Stephen Pahl, Coordinator for Weights and Measures, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §12.43 are proposed under the Texas Agriculture Code (the Code), §13.002, which provides the department with the authority to adopt rules as necessary for the enforcement and administration of the department's Weights and Measures Program; and the Code, §13.1012, which authorizes the department to set by rule and collect a registration fee for persons servicing weighing and measuring devices.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.43. Fees.

Except as provided by Chapter 2, Subchapter B of this title (relating to Consolidated Licenses), the fee for each class of license is $90 [~~$75~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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SUBCHAPTER F. LICENSED INSPECTION COMPANIES

4 TAC §12.53

The Texas Department of Agriculture (the department) proposes amendments to Chapter 12, Weights and Measures, Subchapter F, Licensed Inspection Companies, §12.53, concerning fees charged to businesses who employ registered technicians to place weights and measures devices into service, remove out-of-order tags and perform inspections of liquefied petroleum gas (LPG) meters and ranch scales on behalf of the department. The proposed amendments also concern the maximum amount that licensed inspection companies can charge for LPG meter or ranch scale inspections. The amendments to §12.53 are proposed to increase the fees charged to register a weights and measures inspection company with the department and to increase the maximum amount that licensed inspection companies can charge for LPG meter and ranch scale inspections. The amendment concerning the license fee is further proposed to ensure that costs associated with the administration of the department's weights and measures regulatory activities are recovered as required by the Texas Agriculture Code, §12.0144 and directed by the Texas Legislature, 78th Session, 2003.

David Kostroun, Assistant Commissioner for Regulatory Programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section. There will be an approximate increase in state revenue of $345 per year beginning in fiscal year 2004 due to the increase in inspection company license fees. In addition, increasing the maximum amount that licensed inspection companies can charge for LPG meter or ranch scale inspections will allow the private companies to better recover costs associated with inspections. There will be no anticipated cost to local government as a result of enforcing or administering the amended section.

Mr. Kostroun has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be that costs of implementing the weights and measures program are recovered. The anticipated economic cost to those individuals, micro businesses and small businesses employing registered technicians required to comply with the amended section is a $15 increase to each class of license. The anticipated economic cost to those individuals, small businesses, and large businesses that are required to have their LPG meters and ranch scales inspected by a licensed inspection company is an increase of $100 for each inspection.

Comments on the proposal may be submitted to Stephen Pahl, Coordinator for Weights and Measures, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §12.53 are proposed under the Texas Agriculture Code (the Code), §13.002, which provides the department with the authority to adopt rules as necessary for the enforcement and administration of the department's Weights and Measures Program; and the Code, §13.403, which authorizes the department to establish by rule an annual license fee for licensed inspectors of weighing and measuring devices.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.53. Fees.

(a) The fee for each class of license is $90 [~~$75~~].

(b) LPG meter or ranch scale inspection by registered technicians shall not exceed $250 [~~$150~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
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SUBCHAPTER G. REGISTERED TECHNICIANS

4 TAC §12.60

The Texas Department of Agriculture (the department) proposes amendments to Chapter 12, Weights and Measures, Subchapter G, Registered Technicians, §12.60, concerning examination fees charged to registered technicians. The amendments to §12.60 are proposed to increase the examination fee charged for each exam administered. The amendments are further proposed to ensure that costs associated with the administration of the department's weights and measures regulatory activities are recovered as required by the Texas Agriculture Code, §12.0144, and directed by the Texas Legislature, 78th Session, 2003.

David Kostroun, Assistant Commissioner for Regulatory Programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government as a result of enforcing and administering the amended section. There will be an approximate increase in state revenue of $4,494 per year beginning in fiscal year 2004 due to the increase in the registered technician examination fee. There will be no anticipated cost to local government as a result of enforcing and administering the amended section.

Mr. Kostroun has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be that costs of implementing the weights and measures program are recovered. The anticipated economic cost to those individuals, micro businesses and small businesses required to comply with the amended section is a $10 increase to the examination fee. Registered technicians are required to retake examinations every five years.

Comments on the proposal may be submitted to Stephen Pahl, Coordinator for Weights and Measures, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §12.60 are proposed under the Texas Agriculture Code (the Code), §13.002, which provides the department with the authority to adopt rules as necessary for the for enforcement and administration of the department's Weights and Measures Program; and the Code, §13.1012, which authorizes the department to set by rule and collect a registration fee for persons servicing weights and measures devices.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.60. Registration Requirement Procedure.

(a) - (d) (No change.)

(e) Examination fees for each class of license is $60 [~~$50~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
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SUBCHAPTER H. PUBLIC WEIGHERS

4 TAC §12.73

The Texas Department of Agriculture (the department) proposes amendments to Chapter 12, Weights and Measures, Subchapter H, Public Weighers, §12.73, concerning fees charged to public weighers. The amendments to §12.73 are proposed to increase the fees charged to license a public weigher with the department. The amendment concerning the license fee is further proposed to ensure that costs associated with the administration of the department's weights and measures regulatory activities are recovered as required by the Texas Agriculture Code, §12.0144, and directed by the Texas Legislature, 78th Session, 2003.

David Kostroun, Assistant Commissioner for Regulatory Programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section. There will be an approximate increase in state revenue of $13,340 per year beginning in fiscal year 2004 due to the increase in public weigher license fees. There will be no anticipated cost to local government as a result of enforcing or administering the amended section.

Mr. Kostroun has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be that costs of implementing the weights and measures program are recovered. The anticipated economic cost to those individuals, micro businesses and small businesses required to comply with the amended section is a $20 increase to each County public weigher license and an $80 increase to each State public weigher license. County and State public weighers are licensed for a period of two years.

Comments on the proposal may be submitted to Stephen Pahl, Coordinator for Weights and Measures, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §12.73 are proposed under the Texas Agriculture Code (the Code), §13.002, which provides the department with the authority to adopt rules as necessary for the enforcement and administration of the department's Weights and

Measures Program; and the Code, §13.255, which authorizes the department to set by rule and collect a nonrefundable fee for issuing a certificate of authority for a County or Deputy public weigher.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.73. Fees.

(a) County or Deputy public weigher fee is $120 [~~$100~~].

(b) State public weigher fee is $480 [~~$400~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 15. EGG LAW

4 TAC §15.4

The Texas Department of Agriculture (the department) proposes amendments to Chapter 15, Egg Law, §15.4, concerning fees charged to egg dealer/wholesalers, processors, and brokers. The amendments to §15.4 are proposed to increase the license fees for an egg dealer/wholesaler, processor, or broker. The amendment concerning the license fee is further proposed to ensure that costs associated with the administration of the department's egg law regulatory activities are recovered as required by the Texas Agriculture Code, §12.0144, and directed by the Texas Legislature, 78th Session, 2003. The amendments increase license fees for all classes of egg dealers/wholesalers, processors and brokers.

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section There will be an approximate increase in state revenue of $18,536 per year beginning in fiscal year 2004 due to the increase in egg dealer/wholesaler, processor, and broker license fees. There will be no anticipated cost to local government as a result of enforcing or administering the amended section.

Mr. Kostroun has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing and administering the amended section will be that costs of implementing the egg program are recovered. The anticipated economic cost to those individuals, micro businesses and small businesses required to comply with the amended section is a 33 % increase to dealer/wholesaler class 1, 2, 3, 4 and processor class 1 and 2 licenses, a 20 % increase to dealer/wholesaler class 5, 6, 7, 8, 9, 10, 11,12, processor class 3 and 4 and broker licenses.

Comments on the proposal may be submitted to Stephen Pahl, Coordinator for Egg Law, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §15.4 are proposed under the Texas Agriculture Code (the Code), §132.003, which provides the department with the authority to adopt rules as necessary for the for administration of the Code, Chapter 132; the Code §132.026, which authorizes the department to set by rule a fee for an egg dealer-wholesaler license; and the Code, §132.028, which authorizes the department to set by rule and charge a fee for an egg brokers license.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 132.

§15.4. Fees.

(a) The fee schedule for a dealer/wholesaler is:
Figure: 4 TAC §15.4(a)

(b) The fee schedule for a processor is:
Figure: 4 TAC §15.4(b)

(c) The license fee for a broker is $420 [~~$350~~].

(d)-(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 16. AQUACULTURE

4 TAC §16.3

The Texas Department of Agriculture (the department) proposes an amendment to Chapter 16, Aquaculture, §16.3, concerning fees charged to aquaculturist. The amendment to §16.3 is proposed to increase the fees charged to license an aquaculture facility or a fish farm vehicle. The amendment concerning the license fee is further proposed to ensure that costs associated with the administration of the department's aquaculture regulatory activities are recovered as required by the Texas Agriculture Code, §12.0144, and directed by the Texas Legislature, 78th Session, 2003 . The amendment increases the aquaculture license fee from $100 to $120.

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section. There will be an approximate increase in state revenue of $2,400 per year beginning in fiscal year 2004 due to the increase in aquaculture license fees. There will be no anticipated cost to local government as a result of enforcing and administering the amended section.

Mr. Kostroun has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing and administering the amended

section will be that costs of implementing the aquaculture program are fully recovered. The anticipated economic cost to those individuals, microbusinesses and small businesses required to comply with the amended section is a $20 increase to each aquaculture license. Aquaculture facilities and fish farm vehicles are licensed for two years.

Comments on the proposal may be submitted to Stephen Pahl, Coordinator for Aquaculture, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §16.3 are proposed under the Texas Agriculture Code (the Code), §134.005, which provides the department with the authority to adopt rules as necessary for carrying out the department's duties under the Code, Chapter 134; and the Code, §134.014, which authorizes the department to set and charge a fee for an aquaculture license or a fish farm vehicle license.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 134.

§16.3. Fees.

Except as provided by Chapter 2, Subchapter B of this title (relating to Consolidated Licenses), the fee for a license under this chapter is $120 [~~$100~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes amendments to §80.20 and §80.202, which increase fees in amounts that are reasonable and necessary to defray the costs of administering the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.

The Department has not revised its fees in approximately 15 years. During that time, operating costs of the Department have increased, in titling, inspections, enforcement, and other areas. The proposed increases are designed to enable the Department to continue to conduct its oversight functions on a fiscally responsible basis.

Tim Irvine, Deputy Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that these sections as proposed are in effect the fiscal implications are expected to be $2,461,935 per year as a result of increasing fees in §80.20 and $2,291,010 per year as a result of increasing fees in §80.202. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the sections.

Section 80.20(b)(1) increases the reporting fee for the installation of a home not installed on a permanent foundation from $20 to $100.

Section 80.20(b)(2) increases the reporting fee for homes installed on a permanent foundation from $100 to $150.

Section 80.20(c) increases the alteration fee from $30 to $60.

Section 80.20(d) increases the fee for issuance of Texas Seals from $15 to $35 per section.

Section 80.20(f) increases the fee for a homeowner's temporary installer's license from $40 to $100.

Section 80.20(h)(1) increases the fee for a habitability inspection from $100 to $150 on a home which is to be titled for use as a residence after the title has been previously canceled to business use or to become real estate.

Section 80.20(h)(2) increases the fee for a habitability inspection from $125 to $200 for the plan review and inspection of a salvaged home which is to be rebuilt to determine if the home is habitable for reinstatement of the title.

Section 80.20(i)(1) increases the fee for a consumer complaint inspection from $100 to $150 for the initial inspection when requested by a license holder or party other than a consumer.

Section 80.20(i)(2) increases the fee for a consumer complaint inspection from $100 to $150 for the reinspection of a consumer's home.

Section 80.202(a)(1) increases the fee for a title transaction from $35 to $55.

Section 80.202(a)(2) increases the fee to provide a certification form for a home that is permanently affixed from $100 to $150.

Section 80.202(a)(3) increases the fee for Quick Title Service from $35 to $55 for each title transaction.

Section 80.202(e) increases the fee for a title search from $10 to $20.

Mr. Irvine also has determined that for each year of the first five years the sections as proposed are in effect the public benefit as a result of enforcing the sections will be: ability to continue providing quality service in title issuance, installation inspections, enforcement activities, and gathering of data to facilitate the administration of the Act. The probable economic costs for each section of the rules are as follows:

Section 80.20(b)(1) is expected to have an economic cost to persons/businesses of an additional $80 per home for reporting the installation of a home that is not installed on a permanent foundation. The increase is necessary to defray the cost of conducting installation inspections. This will benefit the consumer by ensuring that the home is installed properly. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.20(b)(2) is expected to have an economic cost to persons/businesses of an additional $50 per home for reporting the

installation of a home that is installed on a permanent foundation. The increase is necessary to defray the cost of conducting installation inspections. This will benefit the consumer by ensuring that the home is installed properly. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.20(c) is expected to have an economic cost to persons/businesses of an additional $30 per hour or a minimum of $60 for the inspection of alterations. The increase is necessary to defray cost of conducting the inspection. This will benefit the consumer by ensuring that alterations on the structure, plumbing, heating, or electrical systems are safely and properly executed. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.20(d) is expected to have an economic cost to persons/businesses of an additional $20 per section for the issuance of Texas Seals. The increase is necessary to defray the cost of issuing the seals. This will benefit the consumer by ensuring that the seals are issued in a timely manner. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.20(f) is expected to have an economic cost to persons/businesses of an additional $60 per section for the issuance of a homeowner's temporary installer's license. The increase is necessary to defray the cost of issuing the license. This will benefit the consumer by ensuring that licenses are issued in a timely manner. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.20(h)(1) is expected to have an economic cost to persons/businesses of an additional $50 for the habitability inspection on a home which is to be titled for use as a residence after the title has been previously canceled to business use or to become real property. The increase is necessary to defray the cost of conducting the inspection. This will benefit the consumer by ensuring the home is safe for use as a residence and that the inspections are conducted in a timely manner. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.20(h)(2) is expected to have an economic cost to persons/businesses of an additional $75 for the plan review and inspection of a salvaged home which is to be rebuilt to determine if the home is habitable for reinstatement of the title. The increase is necessary to defray the cost of conducting the plan review and the inspection. This will benefit the consumer by ensuring the home is safe for use as a residence and that the inspections are conducted in a timely manner. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.20(i)(1) is expected to have an economic cost to persons/businesses of an additional $50 for the initial consumer complaint inspection when requested by a license holder or party other than a consumer. The increase is necessary to defray the cost of conducting the inspection. This will benefit the consumer by ensuring the home is or will be repaired to meet HUD-Code Standards and that the inspections are conducted in a timely manner. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.20(i)(2) is expected to have an economic cost to persons/businesses of an additional $50 for the reinspection of a consumer's home. The increase is necessary to defray the cost of conducting the inspection. This will benefit the consumer by ensuring the home is or will be repaired to meet HUD-Code Standards and that the inspections are conducted in a timely manner. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.202(a)(1) is expected to have an economic cost to persons/businesses of an additional $20 for each title transaction. The increase is necessary to defray the cost of title issuance. This will benefit the consumer by ensuring that titles are issued in a timely manner. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.202(a)(2) is expected to have an economic cost to persons/businesses of an additional $50 to provide a certification form for a home that is permanently affixed. The increase is necessary to defray the cost of conducting installation inspections. This will benefit the consumer by ensuring that the home is installed properly. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.202(a)(3) is expected to have an economic cost to persons/businesses of an additional $20 for Quick Title Service. The increase is necessary to defray the cost of title issuance. This will benefit the consumer by ensuring titles are issued in a timely manner. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Section 80.202(e) is expected to have an economic cost to persons/businesses of an additional $10 for a title search. The increase is necessary to defray the cost of conducing title searches. This will benefit the consumer by ensuring title searches are conducted in a timely manner. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the section.

Comments may be submitted to Mr. Tim Irvine, Deputy Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address tirvine@tdhca.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER C. FEE STRUCTURE

10 TAC §80.20

The amendment is proposed under the Texas Manufactured Housing Standards Act, Subtitle C, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed amendment.

§80.20. Fees.

(a) Annual License Fees and Renewal Fees:

(1) $425 for each manufacturer's plant license;

(2) $275 for each retailer's sales license;

(3) $275 for each rebuilder's license;

(4) $175 for each broker's license;

(5) $175 for each installer's license; and

(6) $100 for each salesperson's license.

(b) Installation Fees:

(1) There is a reporting fee of $100 [~~$20~~] for the installation of each manufactured home which is not installed on a permanent foundation.

(2) There is a reporting fee of $150 [~~$100~~] for the installation of a manufactured home permanently affixed to real estate or on a permanent foundation.

(3) Installation fees shall be submitted to the department as follows:

(A) When the installation occurs in conjunction with a title transfer, the fee must be submitted to the department along with the application for title and the Notice of Installation Affidavit; or

(B) For secondary moves (when there is no title transfer), the fee must be submitted to the department along with a completed Notice of Installation Affidavit within ten (10) working days following the installation date.

(4) Fee distributions to local governmental entities performing inspection functions pursuant to contract with the department shall be made in accordance with department procedures and the provisions of the contract.

(c) Alteration Fee: There is a fee of $60 [~~$30~~] per hour or a minimum fee of $60 [~~$30~~] for the inspection of alterations made upon the structure, plumbing, heating, or electrical systems of manufactured homes. The fee is paid to the department by the person making the alterations. The person shall also reimburse the department for mileage and per diem incurred by department personnel to and from the place of inspection.

(d) Seal Fee: There is a fee of $35 [~~$15~~] for the issuance of Texas Seals. Any person who sells, exchanges, lease purchases, or offers for sale, exchange, or lease purchase a used HUD-Code manufactured home manufactured after June 15, 1976, that does not have a HUD label affixed, or a used mobile home manufactured prior to June 15, 1976, that does not have a Texas Seal affixed shall file an application to the department for a Texas Seal. The application shall be accompanied by the seal fee of $35 [~~$15~~] per section made payable to the department.

(e) Monitoring Fee: There is a fee, as required by HUD, to be paid by each manufacturer in this state for each HUD-Code manufactured home produced. The monitoring inspection fee is established by the secretary of HUD, (pursuant to 24 CFR §3282.307) who shall distribute the fees collected from all manufacturers among the approved and conditionally approved states based on the number of new homes whose first location after leaving the manufacturing plant is on the premises of distributor, retailer, or purchaser in that state, and the extent of participation of the state in the joint monitoring program established under the National Manufactured Housing Construction and Safety Standards Act of 1974.

(f) Homeowner's Temporary Installer's License: There is a fee of $100 [~~$40~~] for the issuance of a homeowner's temporary installer's license, which shall also include the cost of the installation inspection. The fee shall be made payable to the department.

(g) Education Fee: Each attendee at the course of instruction in the law and consumer protection regulations for license applicants shall be assessed a fee of $250. If a manufacturer requests the training be performed at his or her facility, the manufacturer shall reimburse the department for the actual costs of the training session (educational fee plus actual cost of travel).

(h) Habitability Inspection:

(1) There is a fee of $150 [~~$100~~] for the inspection of a manufactured home which is to be titled for use as a residence after the title has been previously canceled for business use or to become real estate. The inspection is to determine if the home is habitable as defined by §8 of the Standards Act. The fee shall accompany a Form A to apply for reinstatement of the title along with those documents set forth in §80.207 of this title (relating to Reinstatement of Canceled Documents of Title). The person requesting the inspection for the use change of a manufactured home shall be charged for mileage and per diem incurred by department personnel traveling to and from the location of the manufactured home. The inspector shall advise the consumer of the charges incurred and no title shall be issued until all fees have been paid.

(2) There is a fee of $200 [~~$125~~] for the plan review and inspection of a salvaged manufactured home which is to be rebuilt to determine if the home is habitable for reinstatement of the title. The fee shall accompany a written request for the inspection. The rebuilder shall also be charged for mileage and per diem incurred by department personnel traveling to and from the location of the home. See §80.66 of this title (relating to Rebuilding or Repairing a "Salvaged" Manufactured Home). The inspector shall advise the rebuilder of the charges incurred and no title shall be issued until all fees have been paid.

(i) Consumer Complaint Inspection:

(1) There is a fee of $150 [~~$100~~] for the initial inspection of a consumer's home in accordance with a consumer complaint when requested by a license holder or party other than a consumer. The fee shall accompany a written request for the inspection.

(2) There is a fee of $150 [~~$100~~] for the reinspection of a consumer's home. The fee shall be paid by the party deemed responsible by the department.

(j) Titles: Fees relating to titles and title transactions are set forth in §80.202 of this title (relating to Fees for Title Documents).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303668
Tim Irvine
Deputy Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 475-2206

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SUBCHAPTER G. TITLING

10 TAC §80.202

The amendment is proposed under the Texas Manufactured Housing Standards Act, Subtitle C, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured

Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed amendment.

§80.202. Fees for Title Documents.

(a) Title Transaction Fees.

(1) There shall be a fee of $55 [~~$35~~] for each title transaction. The fee shall be submitted in the form of a cashier's check or money order payable to the Texas Department of Housing and Community Affairs. The fee shall accompany the required documents forwarded to the Manufactured Housing Division of the department at its principal office in Austin. Ten dollars of the fee for each title transaction shall be deposited in the HORF. A title transaction is the issuance, reissuance, reinstatement, cancellation or recordation of:

(A) a document of title;

(B) Certificate of Attachment;

(C) a salvage title;

(D) a Manufacturer's Certificate of Origin;

(E) the filing of an inventory financing lien;

(F) the filing of foreclosure documents or a repossession affidavit; and

(G) the recording of a transfer of ownership from a lienholder to or through a retailer.

(2) There shall be a separate filing fee of $150 [~~$100~~] when a certification form is provided for a home that is permanently affixed.

(3) There shall be a separate transaction fee of $55 [~~$35~~] for Quick Title Service related to the issuance of titles in addition to the $55 [~~$35~~] for each title transaction. Quick Title Service shall be defined as the processing of the documents related to a title transfer within three (3) working days from the day the application is received in the Manufactured Housing Division. Title transfer documents must be received in good order in the department's manufactured housing division in Austin for the issuance of a manufactured housing title on a Quick Title Service basis. Title transfer documents which are not in good transfer order or which are incomplete will be returned to the sender, and the title application will be processed within three (3) working days from the date that correct and completed documents are received. All quick title applications must be submitted by overnight mail or delivered in-person.

(b) If a correction of a document is required as a result of a mistake by the department, the issuance of a new document shall not require a fee.

(c) All persons licensed with the department as a manufacturer, retailer, broker, or installer may submit company or business firm checks in payment of any fee described herein. All state or federally chartered banks, savings banks or savings institutions and all commercial lenders or mortgage bankers who extend credit for the retail purchase of manufactured homes may also pay any fees with company or business firm checks at the discretion of the department. All checks shall be made payable to the Manufactured Housing Division of TDHCA.

(d) One check may be submitted in payment of the aggregate fees for multiple transactions or the issuance of more than one document. When multiple applications are submitted, a form prescribed by the department must be included which shall identify each application and reconcile the fee for each application with the total amount of the check.

(e) There shall be a fee of $20 [~~$10~~] for any title search which shall be paid to the department by the requesting party in the form of a cashier's check or money order. The request must be in writing and must state the specific information being requested.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303669
Tim Irvine
Deputy Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 475-2206

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

The Railroad Commission of Texas (Commission) proposes amendments to §§3.12, 3.13, and 3.30, relating to Directional Survey Company Report; Casing, Cementing, Drilling, and Completion Requirements; and Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Natural Resource Conservation Commission (TNRCC); the repeal of §§3.65, 3.66, 3.67, and 3.69, relating to Pipeline Permits Required; Pipeline Tariffs; Obtaining Pipeline Connections; and Definitions; new §§3.70 and 3.71, relating to Pipeline Permits Required; and Pipeline Tariffs; the repeal of §3.72, relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle; new §3.72, relating to Obtaining Pipeline Connections; the repeal of §§3.75, and 3.77, relating to Discharges to Waters of the State; and Brine Mining Injection Wells; and new §§3.79, 3.81 and 3.85, relating to Definitions; Brine Mining Injection Wells; and Manifest to Accompany Each Transport of Liquid Hydrocarbons by Vehicle; and amendments to §§3.93, 3.99, and 3.100, relating to Water Quality Certification Definitions; Cathodic Protection Wells; and Seismic Holes and Core Holes.

The Commission proposes these repeals, new sections, and amendments to update references to rule numbers or titles, update agencies' names, and repeal and renumber some rules so that the Texas Administrative Code section number matches the commonly- used Statewide Rule number. All of the proposed changes are non- substantive and are made for clarification and accuracy. The proposed amendment to §3.12 adds overnight mail as a delivery option. The proposed amendments to §3.100 and the change in wording in new §3.79 (current §3.69) update the references to the Commission's coal and uranium mining regulations. Sections 3.99(i) and 3.100(b) are proposed to be deleted because they refer to a rule which has been repealed.

The Commission also proposes the review of these rules pursuant to Texas Government Code, §2001.039, in a separate document filed simultaneously with the *Texas Register*. In addition to the repeals, new sections, and amendments in this proposal, the proposed review also includes §§3.6, 3.16, 3.20, 3.23, 3.27, 3.31, 3.34, 3.41, 3.54, 3.55, 3.62, 3.80, and 3.102, relating to Application for Multiple Completion; Log and Completion or Plugging Report; Notification of Fires Breaks, Leaks, and Blowouts; Vacuum Pumps; Gas To Be Measured and Surface Commingling of Gas; Gas Reservoirs and Gas Well Allowable; Gas To Be Produced and Purchased Ratably; Application for New Oil or Gas Field Designation and/or Allowable; Gas Reports Required; Reports on Gas Wells Commingling Liquid Hydrocarbons before Metering; Cycling Plant Control and Reports; Commission Forms, Applications and Filing Requirements; and Tax Reduction for Incremental Production.

Leslie Savage, Oil and Gas Division planner, has determined that for each year of the first five years the repeals, new sections, and amendments as proposed will be in effect, there will be no fiscal implications for state or local governments.

There will be no cost of compliance for individuals, small businesses, or micro-businesses.

Ms. Savage has determined that for each year of the first five years that the repeals, new sections, and amendments will be in effect, there will be a public benefit in that the Commission's rules will be clearer and more accurate.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register* and shall refer to Oil and Gas Docket No. 20- 0235283. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

16 TAC §§3.12, 3.13, 3.30, 3.70 - 3.72, 3.79, 3.81, 3.85, 3.93, 3.99, 3.100

The Commission proposes the new sections, and amendments pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells and persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction and pursuant to Texas Natural Resources Code §§85.042, 85.202, 86.041 and 86.042 which require the Commission to adopt rules to control waste of oil and gas.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.024, 85.202, 86.041, and 86.042.

Cross-reference to statute: Texas Natural Resources Code, §§81.051 and 81.052 and §§85.042, 85.202, 86.041 and 86.042.

Issued in Austin, Texas, on June 10, 2003.

§3.12. Directional Survey Company Report.

(a) (No change.)

(b) Each directional survey, with its accompanying certification and a certified plat on which the bottom hole location is oriented both to the surface location and to the lease lines (or unit lines in case of pooling) shall be mailed by registered, [~~or~~] certified, or overnight mail direct to the commission in Austin by the surveying company making the survey.

§3.13. Casing, Cementing, Drilling, and Completion Requirements.

(a) General.

(1) (No change.)

(2) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(A)-(B) (No change.)

(C) Protection depth--Depth to which usable-quality water must be protected, as determined by the Texas Commission on Environmental Quality (TCEQ) or its successor agencies [~~Department of Water Resources~~], which may include zones that contain brackish or saltwater if such zones are correlative and/or hydrologically connected to zones that contain usable-quality water.

(D) (No change.)

(b) Onshore and inland waters.

(1) (No change.)

(2) Surface casing.

(A) Amount required.

(i) An operator shall set and cement sufficient surface casing to protect all usable-quality water strata, as defined by the TCEQ [~~Texas Department of Water Resources~~]. Before drilling any well in any field or area in which no field rules are in effect or in which surface casing requirements are not specified in the applicable field rules, an operator shall obtain a letter from the TCEQ [~~Texas Department of Water Resources~~] stating the protection depth. In no case, however, is surface casing to be set deeper than 200 feet below the specified depth without prior approval from the commission.

(ii) (No change.)

(B)-(G) (No change.)

(3)-(5) (No change.)

(c) (No change.)

§3.30. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) [~~Natural Resource Conservation Commission (TNRCC)~~].

(a) (No change.)

(b) General agency jurisdictions.

(1) Texas Commission on Environmental Quality (TCEQ) (the successor agency to the Texas Natural Resource Conservation Commission (TNRCC)). References in this section to TCEQ shall mean TCEQ or any successor agencies.

(A) The TCEQ [~~TNRCC~~] has jurisdiction over solid waste under Chapter 361 of the Texas Health and Safety Code, §§361.001-361.754. The TCEQ's [~~TNRCC's~~] jurisdiction encompasses both hazardous and nonhazardous, industrial and municipal, solid wastes.

(B) Under Texas Health and Safety Code, §361.003(34), solid waste under the jurisdiction of the TCEQ

[~~TNRCC~~] is defined to include "garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities."

(C)-(D) (No change.)

(E) After delegation of RCRA authority to the Railroad Commission of Texas (RRC), the definition of solid waste (which defines TCEQ's [~~TNRCC's~~] jurisdiction) will not include hazardous wastes generated at natural gas or natural gas liquids processing plants, or reservoir pressure maintenance or repressurizing plants. The term natural gas or natural gas liquids processing plant refers to a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids. The term does not include a separately located natural gas treating plant for which the primary function is the removal of carbon dioxide, hydrogen sulfide, or other impurities from the natural gas stream. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment is considered a part of a natural gas or natural gas liquids processing plant only if it is located at a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids. Further, a pressure maintenance or repressurizing plant is a plant for processing natural gas for reinjection (for reservoir pressure maintenance or repressurization) in a natural gas recycling project. A compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system is not a pressure maintenance or repressurizing plant.

(2) Railroad Commission of Texas (RRC).

(A) (No change.)

(B) Notwithstanding subparagraph (A) of this paragraph, hazardous wastes generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ [~~TNRCC~~] until the RRC is authorized by EPA to administer RCRA. When the RRC is authorized by EPA to administer RCRA, jurisdiction over such hazardous wastes will transfer from the TCEQ [~~TNRCC~~] to the RRC.

(c) Definition of hazardous waste.

(1) Under the Texas Health and Safety Code, §361.003(12), a "hazardous waste" subject to the jurisdiction of the TCEQ [~~TNRCC~~] is defined as "solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901, et seq.)." Similarly, under Texas Natural Resources Code, §91.601(1), "oil and gas hazardous waste" subject to the jurisdiction of the RRC is defined as an "oil and gas waste that is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, et seq.)."

(2)-(3) (No change.)

(d) Jurisdiction over specific disposal activities.

(1) Discharges under Texas Water Code, Chapter 26. Under the Texas Water Code, Chapter 26, the TCEQ [~~TNRCC~~] has jurisdiction over discharges of waste into or adjacent to water in the state, other than discharges regulated by the RRC. The RRC regulates discharges of waste from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities (except solution mining activities conducted for the purpose of creating caverns in naturally-occurring salt formations for the storage of wastes regulated by the TCEQ [~~TNRCC~~]) under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26. Discharges of waste regulated by the RRC into water in the state shall not cause a violation of the water quality standards. While water quality standards are established by the TCEQ [~~TNRCC~~] , the RRC has the responsibility for enforcing any violations of such standards. Texas Water Code, Chapter 26, does not require that discharges regulated by the RRC comply with regulations of the TCEQ [~~TNRCC~~] that are not water quality standards. Because of the complexity of 30 Texas Administrative Code §307.6 (concerning toxic materials), the staffs of the TCEQ [~~TNRCC~~] and the RRC will consult from time to time regarding application and interpretation of the Texas Surface Water Quality Standards.

(2) Disposal wells under Texas Water Code, Chapter 27. Jurisdiction over wastes disposed by injection is divided between the RRC and the TCEQ [~~TNRCC~~] as set forth in Texas Water Code, Chapter 27 (the Injection Well Act). The RRC has jurisdiction under Texas Water Code, Chapter 27, over injection wells used to dispose of oil and gas waste. Texas Water Code, Chapter 27, defines "oil and gas waste" to mean "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material." The term "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources" includes waste associated with transportation of crude oil or natural gas by pipeline pursuant to Texas Natural Resources Code, §91.101. The TCEQ [~~TNRCC~~] has jurisdiction over injection wells used to dispose of other types of waste.

(3) Disposal of naturally occurring radioactive material (NORM). (The term "disposal" does not include receipt, possession, use, processing, transfer, transport, storage, or commercial distribution of radioactive materials, including NORM. These activities are under the jurisdiction of the Texas Department of Health per Texas Health and Safety Code, §401.011(a).)

(A) (No change.)

(B) Under Texas Health and Safety Code, §401.412, the TCEQ [~~TNRCC~~] has jurisdiction over the disposal of NORM which is not oil and gas NORM waste.

(e) Jurisdiction over waste from specific oil and gas activities.

(1)-(2) (No change.)

(3) Storage of oil.

(A) Tank bottoms, stormwater runoff, and other wastes from the storage of crude oil (whether foreign or domestic) before it enters the refinery are under the jurisdiction of the RRC. In addition, waste resulting from storage of crude oil at refineries is subject to the jurisdiction of the TCEQ [~~TNRCC~~]. Further, stormwater runoff from terminal facilities where both refined products intended for use offsite and crude oil are stored in aboveground tanks is under the jurisdiction of the TCEQ [~~TNRCC~~]. Stormwater runoff from a terminal facility where

crude oil is stored prior to refining and at which refined products are stored solely for use at the facility is under the jurisdiction of the RRC.

(B) Wastes generated from storage tanks which are part of the refinery and wastes resulting from the wholesale and retail marketing of refined products are subject to the jurisdiction of the TCEQ [~~TNRCC~~].

(4)-(5) (No change.)

(6) Transportation of crude oil or natural gas.

(A) (No change.)

(B) The TCEQ [~~TNRCC~~] has jurisdiction over waste from transportation of refined products by pipeline.

(C) The TCEQ [~~TNRCC~~] also has jurisdiction over wastes associated with transportation of crude oil and natural gas, including natural gas liquids, by railcar, tank truck, barge, or tanker.

(7) Reclamation plants.

(A) The RRC has jurisdiction over wastes from reclamation plants that process wastes from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, such as lease tank bottoms. Waste management activities of reclamation plants for other wastes are subject to the jurisdiction of the TCEQ [~~TNRCC~~].

(B) (No change.)

(8) Refining of oil.

(A) The management of wastes resulting from oil refining operations, including spent caustics, spent catalysts, still bottoms or tars, and API separator sludges, is subject to the jurisdiction of the TCEQ [~~TNRCC~~]. The processing of light ends from the distillation and cracking of crude oil or crude oil products is considered to be a refining operation. The term "refining" does not include the processing of natural gas or natural gas liquids.

(B) (No change.)

(9) Natural gas or natural gas liquids processing plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants. Wastes resulting from activities associated with these facilities include produced water, cooling tower water, sulfur bead, sulfides, spent caustics, sweetening agents, spent catalyst, waste hydrocarbons (including used oil), asbestos insulation, wastes contaminated with PCBs (including transformers, capacitors, ballasts, and soils), treating and cleaning chemicals, filters, trash, domestic sewage, and dehydration materials. These wastes are subject to the jurisdiction of the RRC under Texas Natural Resources Code, §91.101. Disposal of waste from activities associated with natural gas or natural gas liquids processing plants (including gas fractionation facilities), and pressure maintenance or repressurizing plants by injection is subject to the jurisdiction of the RRC under Texas Water Code, Chapter 27. Notwithstanding any contrary provision of this paragraph, until delegation of authority under RCRA to the RRC, the TCEQ [~~TNRCC~~] shall have jurisdiction over wastes resulting from these activities that are not exempt from federal hazardous waste regulation under RCRA and that are considered hazardous under applicable federal rules.

(10) Manufacturing processes.

(A) Wastes that result from the use of natural gas, natural gas liquids, or products refined from crude oil in any manufacturing process, such as the production of petrochemicals or plastics, or from the manufacture of carbon black, are industrial wastes subject to the jurisdiction of the TCEQ [~~TNRCC~~]. The term "manufacturing process" does not include the processing (including fractionation) of natural gas or natural gas liquids at natural gas or natural gas liquids processing plants.

(B) (No change.)

(11) Commercial service company facilities and training facilities.

(A) The TCEQ [~~TNRCC~~] has jurisdiction over wastes generated at facilities, other than actual exploration, development, or production sites (field sites), where oil and gas industry workers are trained. In addition, the TCEQ [~~TNRCC~~] has jurisdiction over wastes generated at facilities where materials, processes, and equipment associated with oil and gas industry operations are researched, developed, designed, and manufactured. However, wastes generated from tests of materials, processes, and equipment at field sites are under the jurisdiction of the RRC.

(B) The TCEQ [~~TNRCC~~] also has jurisdiction over waste generated at commercial service company facilities operated by persons providing equipment, materials, or services (such as drilling and work over rig rental and tank rental; equipment repair; drilling fluid supply; and acidizing, fracturing, and cementing services) to the oil and gas industry. These wastes include the following wastes when they are generated at commercial service company facilities: empty sacks, containers, and drums; drum, tank, and truck rinsate; sandblast media; painting wastes; spent solvents; spilled chemicals; waste motor oil; and unused fracturing and acidizing fluids.

(C)-(E) (No change.)

(12) (No change.)

(f) Interagency activities.

(1) Recycling and pollution prevention.

(A) The TCEQ [~~TNRCC~~] and the RRC encourage generators to eliminate pollution at the source and recycle whenever possible to avoid disposal of solid wastes. Questions regarding source reduction and recycling may be directed to the TCEQ Small Business and Environmental Assistance Division, telephone number (800) 447-2827 [~~TNRCC Office of Pollution Prevention and Recycling (OPPR)/Clean Texas 2000, telephone number (800) 64-TEXAS~~], or to the Waste Minimization Program at the RRC. The TCEQ [~~TNRCC~~] reserves the right to require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the RRC at a facility regulated by the TCEQ [~~TNRCC~~] ; similarly, the RRC reserves the right to require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the TCEQ [~~TNRCC~~] at a facility regulated by the RRC.

(B) The TCEQ [~~TNRCC~~] OPPR and the RRC Waste Minimization Program will meet at least two times each year to maintain a working relationship to enhance the efforts to share information and use resources more efficiently. The TCEQ [~~TNRCC~~] OPPR will make the proper TCEQ [~~TNRCC~~] personnel aware of the services offered by the RRC Waste Minimization Program, share information with the RRC Waste Minimization Program to maximize services to oil and gas operators, and advise oil and gas operators of RRC Waste Minimization Program services. The RRC Waste Minimization Program will make the proper RRC personnel aware of the services offered by the TCEQ [~~TNRCC~~] OPPR, share information with the TCEQ [~~TNRCC~~] OPPR to maximize services to industrial operators, and advise industrial operators of the TCEQ [~~TNRCC~~] OPPR services.

(2) Treatment of wastes under RRC jurisdiction at facilities registered by TCEQ's [~~TNRCC's~~] Petroleum Storage Tank Division.

(A) Soils contaminated with constituents that are physically and chemically similar to those normally found in soils at leaking underground petroleum storage tanks from generators under the jurisdiction of the RRC are eligible for treatment at TCEQ [~~TNRCC~~] regulated soil treatment facilities once alternatives for recycling and source reduction have been explored. For the purpose of this provision, soils containing petroleum substance(s) as defined in 30 Texas Administrative Code §334.481 (concerning definitions) are considered to be similar, but drilling muds, acids, or other chemicals used in oil and gas activities are not considered similar. Generators under the jurisdiction of the RRC must meet the same requirements as generators under the jurisdiction of the TCEQ [~~TNRCC~~] when sending their petroleum contaminated soils to soil treatment facilities under TCEQ [~~TNRCC~~] jurisdiction. Those requirements are in 30 Texas Administrative Code §334.496 (concerning shipping procedures applicable to generators of petroleum-substance waste), except subsection (c) which is not applicable, and 30 Texas Administrative Code §334.497 (concerning recordkeeping and reporting procedures applicable to generators). RRC generators with questions on these requirements should call the TCEQ [~~TNRCC~~] Petroleum Storage Tank (PST) Division, Responsible Party Investigations Section, telephone number (512) 239-2200.

(B) Generators under RRC jurisdiction should also be aware that TCEQ [~~TNRCC~~] regulated soil treatment facilities are required by 30 Texas Administrative Code §334.499 (concerning shipping requirements applicable to owners or operators of storage, treatment, or disposal facilities) to maintain documentation on the soil sampling and analytical methods, chain-of-custody, and all analytical results for the soil received at the facility and transported off-site or reused on-site.

(C) The RRC must specifically authorize management of contaminated soils under its jurisdiction at facilities registered by the PST Division of the TCEQ [~~TNRCC~~]. The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations.

(D) All waste materials, including those that have been treated, that are subject to the jurisdiction of the RRC and are managed at facilities registered by the PST Division of the TCEQ [~~TNRCC~~] will remain subject to the jurisdiction of the RRC. Such materials will be subject to RRC regulations regarding final reuse, recycling, or disposal.

(E) TCEQ [~~TNRCC~~] waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities registered by the PST Division of the TCEQ [~~TNRCC~~].

(3) Disposal of wastes under RRC jurisdiction at facilities permitted by the TCEQ [~~TNRCC~~].

(A) As provided in this paragraph, waste materials subject to the jurisdiction of the RRC may be managed at solid waste facilities under the jurisdiction of the TCEQ [~~TNRCC~~] once alternatives for recycling and source reduction have been explored. The RRC must specifically authorize management of wastes under its jurisdiction at facilities regulated by the TCEQ [~~TNRCC~~]. The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations. In addition, except as provided in subparagraph (B) of this paragraph, the concurrence of the TCEQ [~~TNRCC~~] is required to manage waste under the jurisdiction of the RRC at a facility regulated by the TCEQ [~~TNRCC~~]. The TCEQ's [~~TNRCC's~~] concurrence may be subject to specified conditions.

(B) A facility under the jurisdiction of the TCEQ [~~TNRCC~~] may accept, without further individual concurrence, waste under the jurisdiction of the RRC if that facility is permitted or otherwise authorized to accept that particular type of waste. The phrase "that type of waste" does not specifically refer to waste under the jurisdiction of the RRC, but rather to the waste's physical and chemical characteristics.

(C) In all other instances, individual written concurrences from the TCEQ [~~TNRCC~~] shall be required to manage wastes under the jurisdiction of the RRC at TCEQ [~~TNRCC~~] regulated facilities. (This is required only if the TCEQ [~~TNRCC~~] regulated facility receiving the waste does not have approval to accept the waste included in its permit or other authorization provided by the TCEQ [~~TNRCC~~].) To obtain an individual concurrence, the waste generator must provide to the TCEQ [~~TNRCC~~] sufficient information to allow the concurrence determination to be made, including the identity of the proposed waste management facility, the process generating the waste, the quantity of waste, and the physical and chemical nature of the waste involved (using process knowledge and/or laboratory analysis as defined in 30 Texas Administrative Code, Chapter 335, Subchapter R (concerning waste classification)). In obtaining TCEQ [~~TNRCC~~] approval, generators may use their existing knowledge about the process or materials entering it to characterize their wastes. Material Safety Data Sheets, manufacturer's literature, and other documentation generated in conjunction with a particular process may be used. Process knowledge must be documented and submitted with the request for approval.

(D) Notwithstanding subparagraphs (A)-(C) of this paragraph, waste sludge subject to the jurisdiction of the RRC, other than domestic septage that is not mixed with other waste materials, may not be applied to the land at a facility permitted by the TCEQ [~~TNRCC~~] for the beneficial use of sewage sludge or water treatment sludge. Domestic septage collected from portable toilets at facilities subject to RRC jurisdiction that is not mixed with other waste materials may be managed at a facility permitted by the TCEQ [~~TNRCC~~] for disposal, incineration, or land application for beneficial use of such domestic septage waste without specific authorization from the TCEQ [~~TNRCC~~].

(E) Additional guidance regarding requirements for, and restrictions on, management of particular types of wastes regulated by the RRC at facilities registered or permitted by the TCEQ [~~TNRCC~~] may be issued in the future.

(F) TCEQ [~~TNRCC~~] waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities under the jurisdiction of the TCEQ [~~TNRCC~~]. If a receiving facility nevertheless requests or requires a TCEQ [~~TNRCC~~] waste code for waste under the jurisdiction of the RRC, a code consisting of the following may be provided:

(i)-(iii) (No change.)

(G) If a facility requests or requires a TCEQ [~~TNRCC~~] waste generator registration number for wastes under the jurisdiction of the RRC, the registration number "XXXRC" may be provided.

(H) Wastes that are under the jurisdiction of the RRC need not be reported to the TCEQ's [~~TNRCC's~~] Industrial and Hazardous Waste Division.

(4) Management of nonhazardous wastes under TCEQ [~~TNRCC~~] jurisdiction at facilities regulated by the RRC.

(A) Once alternatives for recycling and source reduction have been explored, and with prior authorization from the RRC, the following nonhazardous wastes subject to the jurisdiction of the TCEQ [~~TNRCC~~] may be disposed of, other than by injection into a Class II well, at a facility regulated by the RRC; bioremediated at a facility regulated by the RRC (prior to reuse, recycling, or disposal); or reclaimed at a crude oil reclamation facility regulated by the RRC:

nonhazardous wastes that are chemically and physically similar to oil and gas wastes, but excluding soils, media, debris, sorbent pads, and other clean-up materials that are contaminated with refined petroleum products.

(B) (No change.)

(C) Once alternatives for recycling and source reduction have been explored, and subject to the RRC's individual authorization, the following wastes under the jurisdiction of the TCEQ [~~TNRCC~~] are authorized without further TCEQ [~~TNRCC~~] approval to be disposed of at a facility regulated by the RRC, bioremediated at a facility regulated by the RRC, or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous bottoms from tanks used only for crude oil storage; unused and/or reconditioned drilling and completion/workover wastes from commercial service company facilities; used and/or unused drilling and completion/workover wastes generated at facilities where workers in the oil and gas exploration, development, and production industry are trained; used and/or unused drilling and completion/workover wastes generated at facilities where materials, processes, and equipment associated with oil and gas exploration, development, and production operations are researched, developed, designed, and manufactured; unless other provisions are made in the underground injection well permit used and/or unused drilling and completion wastes (but not workover wastes) generated in connection with the drilling and completion of Class I, III, and V injection wells; wastes (such as contaminated soils, media, debris, sorbent pads, and other cleanup materials) associated with spills of crude oil and natural gas liquids if such wastes are under the jurisdiction of the TCEQ [~~TNRCC~~]; and sludges from washout pits at commercial service company facilities.

(D) In a public health, public safety, or environmental emergency, the RRC and the TCEQ [~~TNRCC~~] may consider allowing injection of wastes under the jurisdiction of the TCEQ [~~TNRCC~~] into Class II injection wells permitted by the RRC.

(E) Pursuant to Texas Water Code, §27.0511(g), TCEQ [~~TNRCC~~] concurrence is required for injection of TCEQ [~~TNRCC~~]-regulated waste in connection with a secondary or tertiary recovery project.

(F) (No change.)

(5) Drilling in landfills. The TCEQ [~~TNRCC~~] will notify the Environmental Services Section of the Oil and Gas Division of the RRC and the landfill owner at the time a drilling application is submitted if an operator proposes to drill a well through a landfill regulated by the TCEQ [~~TNRCC~~]. The RRC and the TCEQ [~~TNRCC~~] will cooperate and coordinate with one another in advising the appropriate parties of measures necessary to reduce the potential for the landfill contents to cause groundwater contamination as a result of landfill disturbance associated with drilling operations.

(6) Coordination of enforcement actions and cooperative sharing of enforcement information.

(A) In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the TCEQ [~~TNRCC~~] at a facility permitted by the RRC, the TCEQ [~~TNRCC~~] is responsible for enforcement actions against the generator or transporter, and the RRC is responsible for enforcement actions against the disposal facility. In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the RRC at a facility permitted by the TCEQ [~~TNRCC~~] , the RRC is responsible for enforcement actions against the generator or transporter, and the TCEQ [~~TNRCC~~] is responsible for enforcement actions against the disposal facility.

(B) The TCEQ [~~TNRCC~~] and the RRC agree to cooperate with one another by sharing enforcement information. Employees of either agency who discover, in the course of their official duties, information that indicates a violation of a statute, regulation, order, or permit pertaining to wastes under the jurisdiction of the other agency, are encouraged to notify the other agency. In addition, to facilitate enforcement actions, each agency is encouraged to share information in its possession with the other agency if requested by the other agency to do so.

(g) (No change.)

(h) Disputes. The staff of the RRC and the TCEQ [~~TNRCC~~] shall meet as necessary to attempt to resolve any disputes regarding interpretation of this MOU and disputes regarding definitions and terms of art. If a staff-level meeting fails to resolve the dispute, the dispute will be elevated to the senior management of both agencies for resolution.

(i) (No change.)

§3.70. Pipeline Permits Required.

(a) No pipeline or gathering system, whether a common carrier or not, shall be used to transport oil, gas, or geothermal resources from any tract of land within this state without a permit from the commission. Application for the permit shall be made upon the required form, and the permit will be granted if the commission is satisfied from such application and the evidence in support thereof, and its own investigation, that the proposed line is, or will be, so laid, equipped, and managed, as to reduce to a minimum the possibility of waste, and will be operated in accordance with the conservation laws and conservation rules and regulations of the commission.

(b) The permit, if granted, shall be revocable at any time after hearing held after 10 days' notice, if the commission finds that the line is so unsafe, or so improperly equipped, or so managed, as likely to result in waste. If the commission finds the line is in such condition as to cause waste, five days' written notice shall be given to the operating company to correct the condition before notice of hearing for revocation of the permit is given. A permit may also be revoked after 10 days' notice and hearing, if the commission finds that the operator of the line, in its operation thereof, is willfully violating or contributing to the violation of the laws of Texas regulating the production, transportation, processing, refining, treating, and/or marketing of crude oil or geothermal resources, or any of the laws of the state to conserve the oil, gas, or geothermal resources, or any rule or regulation of the commission enacted under such laws.

§3.71. Pipeline Tariffs.

Every person owning, operating, or managing any pipeline, or any part of any pipeline, for the gathering, receiving, loading, transporting, storing, or delivering of crude petroleum as a common carrier shall be subject to and governed by the following provisions. Common carriers specified in this section shall be referred to as "pipelines," and the owners or shippers of crude petroleum by pipelines shall be referred to as "shippers."

(1) All marketable oil to be received for transportation. By the term "marketable oil" is meant any crude petroleum adapted for refining or fuel purposes, properly settled and containing not more than 2.0% of basic sediment, water, or other impurities above a point six inches below the pipeline connection with the tank. Pipelines shall receive for transportation all such "marketable oil" tendered; but no pipeline shall be required to receive for shipment from any one person an amount exceeding 3,000 barrels of petroleum in any one day; and, if the oil tendered for transportation differs materially in character from that usually produced in the field and being transported therefrom by

the pipeline, then it shall be transported under such terms as the shipper and the owner of the pipeline may agree or the commission may require.

(2) Basic sediment, how determined--temperature. In determining the amount of sediment, water, or other impurities, a pipeline is authorized to make a test of the oil offered for transportation from an average sample from each such tank, by the use of centrifugal machine, or by the use of any other appliance agreed upon by the pipeline and the shipper. The same method of ascertaining the amount of the sediment, water, or other impurities shall be used in the delivery as in the receipt of oil. A pipeline shall not be required to receive for transportation, nor shall consignee be required to accept as a delivery, any oil of a higher temperature than 90 degrees Fahrenheit, except that during the summer oil shall be received at any atmospheric temperature, and may be delivered at like temperature. Consignee shall have the same right to test the oil upon delivery at destination that the pipeline has to test before receiving from the shipper.

(3) "Barrel" defined. For the purpose of these sections, a "barrel" of crude petroleum is declared to be 42 gallons of 231 cubic inches per gallon at 60 degrees Fahrenheit.

(4) Oil involved in litigation, etc.--indemnity against loss. When any oil offered for transportation is involved in litigation, or the ownership is in dispute, or when the oil appears to be encumbered by lien or charge of any kind, the pipeline may require of shippers an indemnity bond to protect it against all loss.

(5) Storage. Each pipeline shall provide, without additional charge, sufficient storage, such as is incident and necessary to the transportation of oil, including storage at destination or so near thereto as to be available for prompt delivery to destination point, for five days from the date of order of delivery at destination.

(6) Identity of oil, maintenance of oil. A pipeline may deliver to consignee either the identical oil received for transportation, subject to such consequences of mixing with other oil as are incident to the usual pipeline transportation, or it may make delivery from its common stock at destination; provided, if this last be done, the delivery shall be of substantially like kind and market value.

(7) Minimum quantity to be received. A pipeline shall not be required to receive less than one tank car-load of oil when oil is offered for loading into tank cars at destination of the pipeline. When oil is offered for transportation for other than tank car delivery, a pipeline shall not be required to receive less than 500 barrels.

(8) Gathering charges. Tariffs to be filed by a pipeline shall specify separately the charges for gathering of the oil, for transportation, and for delivery.

(9) Measuring, testing, and deductions (reference Special Order Number 20-63,098 effective June 18, 1973).

(A) Except as provided in subparagraph (B) of this paragraph, all crude oil tendered to a pipeline shall be gauged and tested by a representative of the pipeline prior to its receipt by the pipeline. The shipper may be present or represented at the gauging or testing. Quantities shall be computed from correctly compiled tank tables showing 100% of the full capacity of the tanks.

(B) As an alternative to the method of measurement provided in subparagraph (A) of this paragraph, crude oil and condensate may be measured and tested, before transfer of custody to the initial transporter, by:

(i) lease automatic custody transfer (LACT) equipment, provided such equipment is installed and operated in accordance with the latest revision of American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 6.1, or;

(ii) any device or method, approved by the commission or its delegate, which yields accurate measurements of crude oil or condensate.

(C) Adjustments to the quantities determined by the methods described in subparagraphs (A) or (B) of this paragraph shall be made for temperature from the nearest whole number degree to the basis of 60 degrees Fahrenheit and to the nearest 5/10 API degree gravity in accordance with the volume correction Tables 5A and 6A contained in API Standard 2540, American Society for Testing Materials 01250, Institute of Petroleum 200, first edition, August 1980. A pipeline may deduct the basic sediment, water, and other impurities as shown by the centrifugal or other test agreed upon by the shipper and pipeline; and 1.0% for evaporation and loss during transportation. The net balance shall be the quantity deliverable by the pipeline. In allowing the deductions, it is not the intention of the commission to affect any tax or royalty obligations imposed by the laws of Texas on any producer or shipper of crude oil.

(D) A transfer of custody of crude between transporters is subject to measurement as agreed upon by the transporters.

(10) Delivery and demurrage. Each pipeline shall transport oil with reasonable diligence, considering the quality of the oil, the distance of transportation, and other material elements, but at any time after receipt of a consignment of oil, upon 24 hours' notice to the consignee, may offer oil for delivery from its common stock at the point of destination, conformable to paragraph (6) of this section, at a rate not exceeding 10,000 barrels per day of 24 hours. Computation of time of storage (as provided for in paragraph (5) of this section) shall begin at the expiration of such notice. At the expiration of the time allowed in paragraph (5) of this section for storage at destination, a pipeline may assess a demurrage charge on oil offered for delivery and remaining undelivered, at a rate for the first 10 days of $.001 per barrel; and thereafter at a rate of $.0075 per barrel, for each day of 24 hours or fractional part thereof.

(11) Unpaid charges, lien for and sale to cover. A pipeline shall have a lien on all oil to cover charges for transportation, including demurrage, and it may withhold delivery of oil until the charges are paid. If the charges shall remain unpaid for more than five days after notice of readiness to deliver, the pipeline may sell the oil at public auction at the general office of the pipeline on any day not a legal holiday. The date for the sale shall be not less than 48 hours after publication of notice in a daily newspaper of general circulation published in the city where the general office of the pipeline is located. The notice shall give the time and place of the sale, and the quantity of the oil to be sold. From the proceeds of the sale, the pipeline may deduct all charges lawfully accruing, including demurrage, and all expenses of the sale. The net balance shall be paid to the person lawfully entitled thereto.

(12) Notice of claim. Notice of claims for loss, damage, or delay in connection with the shipment of oil must be made in writing to the pipeline within 91 days after the damage, loss, or delay occurred. If the claim is for failure to make delivery, the claim must be made within 91 days after a reasonable time for delivery has elapsed.

(13) Telephone-telegraph line--shipper to use. If a pipeline maintains a private telegraph or telephone line, a shipper may use it without extra charge, for messages incident to shipments. However, a pipeline shall not be held liable for failure to deliver any messages away from its office or for delay in transmission or for interruption of service.

(14) Contracts of transportation. When a consignment of oil is accepted, the pipeline shall give the shipper a run ticket, and shall give the shipper a statement that shows the amount of oil received for transportation, the points of origin and destination, corrections made

for temperature, deductions made for impurities, and the rate for such transportation.

(15) Shipper's tanks, etc.--inspection. When a shipment of oil has been offered for transportation the pipeline shall have the right to go upon the premises where the oil is produced or stored, and have access to any and all tanks or storage receptacles for the purpose of making any examination, inspection, or test authorized by this section.

(16) Offers in excess of facilities. If oil is offered to any pipeline for transportation in excess of the amount that can be immediately transported, the transportation furnished by the pipeline shall be apportioned among all shippers in proportion to the amounts offered by each; but no offer for transportation shall be considered beyond the amount which the person requesting the shipment then has ready for shipment by the pipeline. The pipeline shall be considered as a shipper of oil produced or purchased by itself and held for shipment through its line, and its oil shall be entitled to participate in such apportionate.

(17) Interchange of tonnage. Pipelines shall provide the necessary connections and facilities for the exchange of tonnage at every locality reached by two or more pipelines, when the commission finds that a necessity exists for connection, and under such regulations as said commission may determine in each case.

(18) Receipt and delivery--necessary facilities for. Each pipeline shall install and maintain facilities for the receipt and delivery of marketable crude petroleum of shippers at any point on its line if the commission finds that a necessity exists therefor, and under regulations by the commission.

(19) Reports of loss from fires, lightning, and leakage.

(A) Each pipeline shall immediately notify the commission district office, electronically or by telephone, of each fire that occurs at any oil tank owned or controlled by the pipeline, or of any tank struck by lightning. Each pipeline shall in like manner report each break or leak in any of its tanks or pipelines from which more than five barrels escape. Each pipeline shall file the required information with the commission in accordance with the appropriate commission form within 30 days from the date of the spill or leak.

(B) No risk of fire, storm, flood, or act of God, and no risk resulting from riots, insurrection, rebellion, war, or act of the public enemy, or from quarantine or authority of law or any order, requisition or necessity of the government of the United States in time of war, shall be borne by a pipeline, nor shall any liability accrue to it from any damage thereby occasioned. If loss of any crude oil from any such causes occurs after the oil has been received for transportation, and before it has been delivered to the consignee, the shipper shall bear a loss in such proportion as the amount of his shipment is to all of the oil held in transportation by the pipeline at the time of such loss, and the shipper shall be entitled to have delivered only such portion of his shipment as may remain after a deduction of his due proportion of such loss, but in such event the shipper shall be required to pay charges only on the quantity of oil delivered. This section shall not apply if the loss occurs because of negligence of the pipeline.

(C) Common carrier pipelines shall mail (return receipt requested) or hand deliver to landowners (persons who have legal title to the property in question) and residents (persons whose mailing address is the property in question) of land upon which a spill or leak has occurred, all spill or leak reports required by the commission for that particular spill or leak within 30 days of filing the required reports with the commission. Registration with the commission by landowners and residents for the purpose of receiving spill or leak reports shall be required every five years, with renewal registration starting January 1, 1999. If a landowner or resident is not registered with the commission, the common carrier is not required to furnish such reports to the resident or landowner.

(20) Printing and posting. Each pipeline shall have paragraphs (1)-(19) of this section printed on its tariff sheets, and shall post the printed sections in a prominent place in its various offices for the inspection of the shipping public. Each pipeline shall post and publish only such rules and regulations as may be adopted by the commission as general rules or such special rules as may be adopted for any particular field.

(21) Immediately upon the publication of its tariffs, and each subsequent amendment thereof, each pipeline is requested to file one copy with the commission.

(22) Records.

(A) Each person operating crude oil gathering, transportation, or storage facilities in the state must maintain daily records of the quantities of all crude oil moved from each oil field in the state, and such records shall also show separately for each field to whom delivery is made, and the quantities so delivered.

(B) The information contained in the records thus required to be kept must be reported to the commission by the gatherers, transporters, and handlers at such times and in such manner as may be required by the commission.

§3.72. Obtaining Pipeline Connections.

(a) A common carrier pipeline transporting crude oil in Texas, upon application for connection and offer of crude oil by a producer or persons owning unconnected lease batteries, shall connect such lease batteries in the following instances:

(1) when such request is made for connection of lease batteries in the general area served by a common carrier, which is an affiliate or subsidiary of a common purchaser, as defined in the Texas Natural Resources Code, §111.081; and

(2) within individual fields, when any common carrier possesses the only pipeline serving such field or common reservoir and request is made for connection of an unconnected lease battery in the field, provided, that for just cause a common carrier pipeline may apply for an exception. If proper application has been made for such connection and the common carrier pipeline refuses to connect the unconnected lease battery, a complaint for failure to connect may be filed with the commission by the person seeking the connection. The complaining person may allege discrimination or noncompliance with the provisions of this subsection or the appropriate section(s) of the Texas Natural Resources Code.

(b) Whether the matter comes to the commission either as an application for exception by the pipeline or on a complaint for failure to connect, at least 10 days' notice shall be given to all interested parties, after which the hearing shall be held. At the hearing, the commission may require and consider, among other factors, evidence relating to ability of the pipeline carrier to transport the quality of oil, the market or lack of market for the proffered oil, and the period required to return the capital investment for the connection. It is not its intention to limit, nor does the commission herein limit, the consideration by it of any facts with respect to a claim of violation of, or of any facts that may constitute a cause of action for violation of, any of the provisions of Texas Natural Resources Code, §§11.001-11.136, whether enumerated in this section or not.

§3.79. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adjacent estuarine zones--This term embraces the area inland from the coast line of Texas and is comprised of the bays, inlets, and estuaries along the gulf coast.

(2) By-product--Any element found in a geothermal formation which when brought to the surface is not used in geothermal heat or pressure inducing energy generation.

(3) Casinghead gas--Any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil.

(4) Commission--The Railroad Commission of Texas.

(5) Common reservoir--Any oil, gas, or geothermal resources field or part thereof which comprises and includes any area which is underlaid, or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlaid by a common pool or accumulation of oil, gas, or geothermal resources.

(6) Cubic foot of gas or standard cubic foot of gas--The volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the standard in this definition, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

(7) District office--The commission-designated office for the geographic area in which the property or act subject to regulation is located or arises.

(8) Dry gas--Any natural gas produced from a stratum that does not produce crude petroleum oil.

(9) Exploratory well--Any well drilled for the purpose of securing geological or geophysical information to be used in the exploration or development of oil, gas, geothermal, or other mineral resources, except coal and uranium, and includes what is commonly referred to in the industry as "slim hole tests," "core hole tests," or "seismic holes." For regulations governing coal exploratory wells, see Chapter 12 of this title (relating to Coal Mining Regulations), and for regulations governing uranium exploratory wells, see Chapter 11, Subchapter C of this title (relating to Surface Mining and Reclamation Division, Substantive Rules--Uranium Mining).

(10) Gas lift--Gas lift by the use of gas not in solution with oil produced.

(11) Gas well--Any well:

(A) which produces natural gas not associated or blended with crude petroleum oil at the time of production;

(B) which produces more than 100,000 cubic feet of natural gas to each barrel of crude petroleum oil from the same producing horizon; or

(C) which produces natural gas from a formation or producing horizon productive of gas only encountered in a wellbore through which crude petroleum oil also is produced through the inside of another string of casing or tubing. A well which produces hydrocarbon liquids, a part of which is formed by a condensation from a gas phase and a part of which is crude petroleum oil, shall be classified as a gas well unless there is produced one barrel or more of crude petroleum oil per 100,000 cubic feet of natural gas; and that the term "crude petroleum oil" shall not be construed to mean any liquid hydrocarbon mixture or portion thereof which is not in the liquid phase in the reservoir, removed from the reservoir in such liquid phase, and obtained at the surface as such.

(12) Gatherer--Includes any pipeline, truck, motor vehicle, boat, barge, or person authorized to gather or accept oil, gas, or geothermal resources from lease production or lease storage.

(13) Geothermal energy and associated resources--

(A) All products of geothermal processes, embracing indigenous steam, hot water and hot brines, and geopressured water;

(B) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(C) Heat or other associated energy found in geothermal formations;

(D) Any by-product derived from them.

(14) Geothermal resource well--A well drilled within the established limits of a designated geothermal field.

(A) A geopressured geothermal well must be completed within a geopressured aquifer.

(B) A geopressured aquifer is a water-bearing zone with a pressure gradient in excess of 0.5 pounds per square inch per foot and a temperature gradient in excess of 1.6 degrees Fahrenheit per 100 feet of depth.

(15) Marginal well--Any oil well which is incapable of producing its maximum capacity of oil except by pumping, gas lift, or other means of artificial lift, and which well so equipped is capable, under normal unrestricted operating conditions, of producing such daily quantities of oil as herein set out, as would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of same, if its maximum daily production were artificially curtailed. The following described wells shall be deemed "marginal wells" in this state.

(A) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this state and having a maximum daily capacity for production of 10 barrels or less, averaged over the preceding 10 consecutive days of stabilized production, producing from a depth of 2,000 feet or less.

(B) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this state and having a maximum daily capacity for production of 20 barrels or less, averaged over the preceding 10 consecutive days of stabilized production, producing from a horizon deeper than 2,000 feet and less in depth than 4,000 feet.

(C) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this state and having a maximum daily capacity for production of 25 barrels or less, averaged over the preceding 10 consecutive days of stabilized production, producing from a horizon deeper than 4,000 feet and less in depth than 6,000 feet.

(D) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this state and having a maximum daily capacity for production of 30 barrels or less, averaged over the preceding 10 consecutive days of stabilized production, producing from a horizon deeper than 6,000 feet and less in depth than 8,000 feet.

(E) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of

artificial lift, within this state and having a maximum daily capacity for production of 35 barrels or less, averaged over the preceding 10 consecutive days of stabilized production, producing from a horizon deeper than 8,000 feet. (Reference Order Number 20-59,200, effective May 1, 1969.)

(16) Natural gas or gas--These terms shall have the same meaning, as used in the rules, regulations, or forms of the commission.

(17) Natural gasoline--Gasoline manufactured from casinghead gas or from any natural gas.

(18) Oil well--Any well which produces one barrel or more crude petroleum oil to each 100,000 cubic feet of natural gas.

(19) Operator--A person, acting for himself or as an agent for others and designated to the commission as the one who has the primary responsibility for complying with its rules and regulations in any and all acts subject to the jurisdiction of the commission.

(20) Person--Any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, and a fiduciary or representative of any kind.

(21) Product--Includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, casinghead gasoline, natural gas gasoline, gas oil, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of petroleum, and/or any and all liquid products or by-products derived from crude petroleum oil or gas, whether hereinabove enumerated or not.

(22) Sour gas--Any natural gas containing more than 1 1/2 grains of hydrogen sulphide per 100 cubic feet or more than 30 grains of total sulphur per 100 cubic feet, or gas which in its natural state is found by the commission to be unfit for use in generating light or fuel for domestic purposes.

(23) Sweet gas--All natural gas except sour gas and casinghead gas.

(24) Texas offshore--This term embraces the area in the Gulf of Mexico seaward of the coast line of Texas comprised of:

(A) the three league area confirmed to the State of Texas by the Submerged Land Act (43 United States Code §§1301-1315); and

(B) the area seaward of such three league area owned by the United States.

(25) Transportation or to transport--The movement of any crude petroleum oil or products of crude petroleum oil or the products of either from any receptacle in which any such crude petroleum or products of crude petroleum oil or the products of either has been stored to any other receptacle by any means or method whatsoever, including the movement by any pipeline, railway, truck, motor vehicle, barge, boat, or railway tank car. It is the purpose of this definition to include the movement or transportation of crude petroleum oil and products of crude petroleum oil and the products of either by any means whatsoever from any receptacle containing the same to any other receptacle anywhere within or from the State of Texas, regardless of whether or not possession or control or ownership change.

(26) Transporter or transporting agency--Includes any common carrier by pipeline, railway, truck, motor vehicle, boat, or barge, and/or any person transporting oil or a product by pipeline, railway, truck, motor vehicle, boat, or barge.

§3.81. Brine Mining Injection Wells.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected person--A person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(2) Brine mining facility or facility--The brine mining injection well, and the pits, tanks, fresh water wells, pumps, and other structures and equipment that are or will be used in conjunction with the brine mining injection well.

(3) Brine mining injection well--A well used to inject fluid for the purpose of extracting brine by the solution of a subsurface salt formation. The term "brine mining injection well" does not include a well used to inject fluid for the purpose of leaching a cavern for the underground storage of hydrocarbons or the disposal of waste, or a well used to inject fluid for the purpose of extracting sulphur by the thermofluid mining process.

(4) Commission--The Railroad Commission of Texas.

(5) Director--The director of the Oil and Gas Division or a staff delegate designated in writing by the director of the Oil and Gas Division or the commission.

(6) Existing brine mining injection well--A brine mining injection well in which injection operations began prior to the effective date of this section.

(7) Fresh water--Water having bacteriological, physical, and chemical properties that make it suitable and feasible for beneficial use for any lawful purpose.

(8) New brine mining injection well--A brine mining injection well in which injection operations begin on or after the effective date of this section.

(9) Permit--A written authorization issued by the commission under this section for the operation of a brine mining injection well.

(10) Person--A natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust partnership, association, or any other legal entity.

(11) Pollution--The alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(b) Prohibitions.

(1) Unauthorized injection. No person may operate a brine mining injection well without obtaining a permit from the commission under this section. No person may begin constructing a new brine mining injection well until the commission has issued a permit to operate the well under this section and a permit to drill, deepen, plug back, or reenter the well under §3.5 of this title (relating to Application to Drill, Deepen, or Plug Back) (Rule 5).

(2) Fluid migration. No person may operate a brine mining injection well in a manner that allow fluids to escape from the permitted injection zone. If fluids are migrating from the permitted injection zone, the operator shall immediately cease injection operations.

(3) Falsifying documents and tampering with gauges. No person may knowingly make any false statement, representation, or certification in any application, report, record, or other document submitted or required to be maintained under this section or under any permit issued pursuant to this section, or falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this section or under any permit issued pursuant to this section.

(c) Standards for permit issuance. A permit may be issued only if the commission determines that the operation of the brine mining injection well will not result in the pollution of fresh water. All permits issued under this section will contain the conditions required by subsections (f) and (g) of this section, and all other conditions reasonably necessary to prevent the pollution of fresh water.

(d) Permit application.

(1) Duty to apply. Any person who operates or proposes to operate a brine mining injection well shall file a permit application with the commission in Austin within the time provided in paragraph (2) of this subsection. The applicant shall mail or deliver a copy of the application to the appropriate district office on the same day the application is mailed or delivered to the commission in Austin. A permit application will be considered filed with the commission on the date it is received by the commission in Austin.

(2) Time to apply.

(A) Any person who proposes to operate a new brine mining injection well shall file a permit application at least 180 days before the date on which injection is to begin, unless a later date has been authorized by the director.

(B) Any person who is operating an existing brine injection well shall file a permit application within 90 days of the effective date of this section.

(C) Any person who has obtained a permit under this section and who wishes to continue to operate the brine mining injection well after the permit expires shall file an application for new permit at least 180 days before the existing permit expires, unless a later date has been authorized by the director.

(3) Who applies. When a brine mining facility is owned by one person but is operated by another person, it is the operator's duty to file an application for a permit.

(4) Application requirements for all applicants. All applicants shall submit the following information, using application forms supplied by the commission:

(A) name, mailing address, and location of the brine mining facility for which the application is submitted;

(B) the operator's name, mailing address, telephone number, and status as federal, state, private, public, or other entity, and a statement indicating whether the operator is the owner of the facility;

(C) the proposed uses for the brine mined at the facility;

(D) a listing of all permits or construction approvals for the facility received or applied for under federal or state environmental programs;

(E) a topographic map, or other map if the topographic map is unavailable, extending one mile beyond the property boundaries of the facility, depicting the facility and those springs, other surface water bodies, drinking water wells, and other wells listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundary;

(F) a plat showing the oil and gas operators of the tract on which the facility is located and the tracts adjacent to the tract on which the facility is located. On the plat or on a separate sheet attached to the plat, the applicant shall list the names and addresses of the oil and gas operators;

(G) a plat showing the surface ownership of the tract on which the facility is located and the tracts adjacent to the tract on which the facility is located. On the plat or on a separate sheet attached to the plat, the applicant shall list the names and addresses of the surface owners, as determined from the current county tax rolls or other reliable sources, and shall identify the source of the list. If the director determines that, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more surface owners, the director may waive the requirements of this subparagraph with respect to those surface owners;

(H) a map with surveys marked showing the type, location, and depth of all wells of public record within a 1/4 mile radius of the brine mining injection well that penetrate the salt formation. The applicant shall attach the following information to the map:

(i) a tabulation of the wells showing the dates the wells were drilled and the present status of the wells; and

(ii) plugging records for plugged and abandoned wells and completion records for other wells;

(I) a letter from the Texas Commission on Environmental Quality stating the depth to which fresh water strata should be protected;

(J) a complete electric log of the brine mining injection well or a nearby well. On the log, the applicant shall identify the geologic formations between the land surface and the top of the salt formation and the depths at which they occur;

(K) a drawing of the surface and subsurface construction details of the brine mining injection well;

(L) the proposed maximum daily injection rate and maximum injection pressure;

(M) the proposed injection procedure;

(N) the proposed mechanical integrity testing procedure;

(O) the source of mining water to be used at the facility. If the source is groundwater, the following information must be included:

(i) the groundwater formation name;

(ii) an depth of the groundwater formation; and

(iii) an analysis of the groundwater;

(P) the direction of the hydraulic gradient in the area; and

(Q) the proposed groundwater monitoring plan, or an alternate plan for assuring that fluids are not escaping from the permitted injection zone.

(5) Additional information. The applicant shall submit any other information required on the application form supplied by the commission. In addition to the information reported on the application form, the applicant shall submit, at the director's request, any other information the commission may reasonably require to assess the brine mining injection well and to determine whether to issue a permit.

(e) Signatories to applications and reports.

(1) Applications. All applications shall be signed as follows:

(A) for a corporation, by a responsible corporate officer. A responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or

(B) for a partnership or sole proprietorship, by a general partner or the proprietor, respectively.

(2) Reports. All reports required by permits and other information requested by the commission shall be signed by a person described in paragraph (1) of this subsection or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(A) the authorization is made in writing by a person described in paragraph (1) of this subsection;

(B) the authorization specifies an individual or position having responsibility for the overall operation of the regulated facility; and

(C) the authorization is submitted to the commission before or together with any report of information signed by the authorized representative.

(3) Certification. Any person signing a document under paragraph (1) or (2) of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or who are directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information."

(f) Conditions applicable to all permits. The conditions specified in this subsection apply to all permits.

(1) Duty to comply. The operator shall comply with all conditions of the permit. Any permit noncompliance is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

(2) Duty to reapply. If the operator wishes to continue a permitted activity after the expiration date of the permit, the operator shall apply for and obtain a new permit.

(3) Need to halt or reduce activity not a defense. It is not a defense for an operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(4) Duty to mitigate. The operator shall take all reasonable steps to minimize and correct any adverse effect on the environment resulting from noncompliance with the permit.

(5) Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, that are installed or used by the operator to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up and auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(6) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(7) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

(8) Duty to provide information. The operator shall also furnish to the commission, within a time specified by the commission, any information that the commission may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The operator shall also furnish to the commission, upon request, copies of records required to be kept under the conditions of the permit.

(9) Inspection and entry. The operator shall allow any member or employee of the commission, on proper identification, to:

(A) enter upon the premises where a regulated activity is conducted or where records are kept under the conditions of the permit;

(B) have access to and copy, during reasonable working hours, any records required to be kept under the conditions of the permit;

(C) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(D) sample or monitor any substance or parameter for the purpose of assuring compliance with the permit or as otherwise authorized by the Texas Water Code, §27.071, or the Texas Natural Resources Code, §91.1012.

(10) Monitoring and records.

(A) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

(B) The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the permit application, for at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the commission at any time.

(C) Records of monitoring information must include the date, exact place, and time of the sampling or measurements; the individual(s) who performed the sampling or measurements; the date(s) analyses were performed; the individual(s) who performed the analyses; the analytical techniques or methods used; and the results of the analyses.

(11) Signatory requirements. All reports and other information submitted to the commission shall be signed and certified in accordance with subsection (e) of this section.

(12) Reporting requirements.

(A) The operator shall notify the commission as soon as possible of any planned physical alteration or addition to the facility.

(B) The operator shall give advance notice to the commission of any planned changes in the facility that may result in noncompliance with permit requirements.

(C) Monitoring results shall be reported at the intervals specified in the permit.

(D) Reports of compliance or noncompliance with the requirements contained in any compliance schedule of the permit shall be submitted no later than 30 days after each scheduled date.

(E) The operator shall report to the commission any noncompliance that may endanger human health or the environment.

(i) An oral report shall be made to the appropriate district office immediately after the operator becomes aware of the noncompliance. A written report shall be filed with the Austin office within five days of the time the operator becomes aware of the noncompliance. The written report must contain the following information:

(I) a description of the noncompliance and its cause;

(II) the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(III) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(ii) Information that shall be reported under this subparagraph includes the following:

(I) any monitoring or any other information that indicates that any contaminant may endanger fresh water; or

(II) any noncompliance with a permit condition or malfunction of the injection system that may cause fluid migration into or between fresh water strata.

(F) The operator shall report any noncompliance not reported under subparagraphs (C), (D), and (E) of this paragraph at the time monitoring reports are submitted. The report must contain the information listed in subparagraph (E) of this paragraph.

(G) If the operator becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or a report to the commission, the operator shall promptly submit the relevant facts or correct information.

(13) Transfers. The permit is not transferable to any person except by modification, or revocation and reissuance, to change the name of the operator and incorporate other necessary requirements.

(14) Completion report. Injection operations may not begin in any new brine mining injection well until the operator has submitted a completion report to the director, and the director has reviewed the completion report and found the well in compliance with the conditions of the permit.

(15) Workovers. The operator shall notify the appropriate district office at least 48 hours before performing any workover or corrective maintenance operations that involve the removal of the tubing or well stimulation.

(16) Mechanical integrity.

(A) No person may perform injection operations in a brine mining injection well that lacks mechanical integrity. A well has mechanical integrity if:

(i) there is not significant leak in the casing; and

(ii) there is no significant fluid movement into fresh water strata through vertical channels adjacent to the wellbore.

(B) For any existing brine mining injection well, mechanical integrity must be demonstrated annually. For any new brine mining injection well, mechanical integrity must be demonstrated before injection operations begin and annually thereafter. In addition, for all brine mining injections wells, mechanical integrity must be demonstrated after any workover that involves the removal of the tubing.

(C) To demonstrate the absence of a significant leak in the casing, the operator shall conduct a fluid pressure test in accordance with the following procedures:

(i) the operator shall submit a written test procedure to the commission in Austin at least 15 days before the test;

(ii) the operator shall notify the district office orally at least 48 hours before the test;

(iii) the operator shall perform the test using the test procedure submitted prior to the testing unless otherwise instructed by the commission; and

(iv) the operator shall file a complete record of the test with the commission in Austin within 30 days after the test.

(D) In lieu of an annual fluid pressure test, the operator may monitor the pressure of a hydrocarbon pad or blanket contained in the annulus space of the well, provided the operator has obtained written approval from the director prior to using this method.

(E) One of the following methods shall be used to demonstrate the absence of significant fluid movement into fresh water strata through vertical channels adjacent to the wellbore:

(i) the results of a temperature or noise log; or

(ii) where the nature of the casing precludes the use of the logging techniques prescribed in clause (i) of this subparagraph, cementing records demonstrating the presence of adequate cement to prevent such movement.

(F) The director may allow the use of a method of demonstrating mechanical integrity other than one listed in subparagraphs (C), (D), and (E) of this paragraph with the approval of the administrator of the Environmental Protection Agency obtained pursuant to 40 Code of Federal Regulations §146.8(d).

(G) Mechanical integrity must be demonstrated to the satisfaction of the director. In conducting and evaluating the results of a mechanical integrity test, the operator and the director will apply procedures and standards generally accepted in the industry. In reporting the results of a mechanical integrity test, the operator must include a description of the method and procedures used. In evaluating the results, the director will review monitoring and other test data submitted since the previous mechanical integrity test.

(17) Notice of conversion or abandonment. The operator shall notify the commission at such times as the permit requires before conversion or abandonment of the well.

(18) Plugging. Within one year after cessation of brine mining injection operations, the operator shall plug the well in accordance with §3.14(a) and (c)(h) of this title (relating to Plugging) (Rule 14(a) and (c)-(h)). For good cause, the director may grant a reasonable extension of time in which to plug the well if the operator submits a proposal that describes actions or procedures to ensure that the well will not endanger fresh water during the period of the extension.

(g) Other permit conditions. In addition to the conditions required in all permits, the commission will establish conditions, as required on a case-by-case basis, to provide for and assure compliance with the requirements specified in this subsection.

(1) Duration. Permits will be effective for a term up to the operating life of the facility. The commission will review each permit

issued pursuant to this section at least once every five years to determine whether cause exists for modification, revocation and reissuance, or termination of the permit.

(2) Operating requirements. Permits will prescribe operating requirements, which will at a minimum specify that:

(A) except during well stimulation, injection pressure at the wellhead may not exceed a maximum calculated to assure that the injection pressure does not initiate new fractures or propagate existing fractures in the injection zone; and

(B) in no case may the injection pressure initiate fractures in the confining zone or cause the escape of injection or formation fluids from the injection zone.

(3) Monitoring requirements. Permits will specify the following monitoring requirements:

(A) requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods;

(B) requirements concerning the type, intervals, and frequency of monitoring sufficient to yield data representative of the monitored activity, including continuous monitoring when appropriate; and

(C) requirements to report monitoring results with a frequency dependent on the nature and effect of the monitored activity, but in no case less than quarterly.

(4) Construction requirements. Permits will specify construction requirements to assure that the injection operations will not endanger fresh water. Changes in construction requirements during construction may be approved by the director as minor modifications of the permit. No such changes may be physically incorporated into the construction of the well prior to approval of the modifications by the director.

(A) An existing brine mining injection well shall achieve compliance with the construction requirements according to a compliance schedule established as soon as possible and in no case later than one year after the effective date of the permit. The permit will require the operator to submit a written compliance report within 30 days after compliance has been achieved.

(B) A new brine mining injection well must be cased and cemented in accordance with §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements), (Rule 13), provided, however, that the operator shall set and cement surface casing in accordance with the letter obtained from the Texas Commission on Environmental Quality pursuant to subsection (d)(4)(I) of this section regardless of the total depth of the well. No alternative program for setting less surface casing will be authorized.

(C) Appropriate logs and other tests must be conducted during the drilling and construction of a new brine mining injection well. A descriptive report interpreting the results of such logs and tests must be prepared by a knowledgeable log analyst and submitted to the director. The logs and tests appropriate to each well will be determined based on the depth, construction, and other characteristics of the well, the availability of similar data in the area, and the need for additional information that may arise from time to time as the construction of the well progresses.

(5) Financial responsibility. It shall be a permit condition that the operator maintain financial responsibility and resources to plug and abandon the brine mining injection well. The operator shall show evidence of such financial responsibility to the commission by submitting a surety bond or letter of credit in a form prescribed by the commission. Such bond or letter of credit shall be maintained until the well is plugged in accordance with subsection (f)(18) of this section.

(6) Corrective action. For all known wells that penetrate the injection zone within a 1/4 mile radius of the brine mining injection well and are improperly completed, plugged, or abandoned, the commission will consider requiring corrective action to prevent movement of fluid into fresh water strata.

(A) In determining the need for corrective action, the commission will consider the following factors: nature and volume of injected fluid; nature of native fluids; potentially affected population; geology; hydrology; history of the injection operation; completion and plugging records; abandonment procedures in effect at the time a well was abandoned; and hydraulic connections with fresh water.

(B) For an existing brine mining injection well requiring corrective action, any permit issued will include a compliance schedule leading to compliance with corrective action requirements. The compliance schedule will require compliance as soon as possible and in no case later than one year after the effective date of the permit. The permit will require the operator to submit a written compliance report within 30 days after all required corrective action has been taken.

(C) For a new brine mining injection well, the operator may not begin injection operations until all required corrective action has been taken.

(h) Modification, revocation and reissuance, and termination of permits. A permit may be modified, revoked and reissued, or terminated by the commission either upon the written request of any interested person, including the operator, or upon the commission's initiative, but only for the reasons and under the conditions specified in this subsection. Except for minor modifications made under paragraph (2) of this subsection, the commission will follow the applicable procedures in subsection (i) of this section. In the case of a modification, the commission may request additional information or an updated application. In the case of a revocation and reissuance, the commission will require a new application. If a permit is modified, only the conditions subject to modification are reopened. The term of a permit may not be extended by modification. If a permit is revoked and reissued, the entire permit is reopened and subject to revision, and the permit is reissued for a new term.

(1) Modification, or revocation and reissuance. The following are causes for modification, or revocation and reissuance:

(A) material and substantial alterations or additions to the facility occurred after permit issuance and justify permit conditions that are different or absent in the existing permit;

(B) the commission receives new information;

(C) the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued;

(D) the commission determines good cause exists for modifying a compliance schedule, such as a act of God, strike, flood, materials shortage, or other event over which the operator has little or no control and for which there is no reasonably available remedy;

(E) cause exists for terminating a permit under paragraph (3) of this subsection, and the commission determines that modification, or revocation and reissuance, is appropriate; or

(F) a transfer of the permit is proposed.

(2) Minor modifications. With the operator's consent, the director may make minor modifications to a permit administratively, without following the procedures of subsection (i) of this section. Minor modifications may only:

(A) correct clerical or typographical errors, or clarify any description or provision in the permit, provided that the description or provision is not changed substantively;

(B) require more frequent monitoring or reporting;

(C) change construction requirements provided that any changes shall comply with the requirements of subsection (g)(4) of this section; or

(D) allow a transfer of the permit where the director determines that no change in the permit is necessary other than a change in the name of the operator, provided that a written agreement between the current operator and the new operator containing a specific data for the transfer of permit responsibility, coverage, and liability has been submitted to the commission.

(3) Termination. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(A) the operator fails to comply with any condition of the permit or this section;

(B) the operator fails to disclose fully all relevant facts in the permit application or during the permit issuance process, or misrepresents any relevant fact at any time;

(C) a material change of conditions occurs in the operation or completion of the well, or there are material changes in the information originally furnished;

(D) the commission determines that the permitted injection endangers human health or the environment, or that pollution of fresh water is occurring or is likely to occur as a result of the permitted injection; or

(E) fluids are escaping from the permitted injection zone.

(i) Permitting procedures.

(1) Review of applications. Upon receipt of an application for a permit, the director will review the application for completeness. Within 30 days after receipt of the application, the director will notify the applicant in writing whether the application is complete or deficient. A notice of deficiency will state the additional information necessary to complete the application, and a date for submitting this information. The application will be deemed withdrawn if the necessary information is not received by the specified date, unless the director has extended this date upon request of the applicant. Upon timely receipt of the necessary information, the director will notify the applicant that the application is complete. The director will not begin processing a permit until the application is complete.

(2) Permit denial. If the director administratively denies a permit application, a notice of administrative denial will be mailed to the applicant. The applicant will have a right to a hearing on request. If the applicant requests a hearing, the notice of administrative denial will be subject to the same procedures as a draft permit prepared under paragraph (3) of this subsection.

(3) Draft permits.

(A) A draft permit will be prepared when the director tentatively decides:

(i) to issue a permit;

(ii) to modify, or revoke and reissue, a permit; or

(iii) to terminate a permit, in which case the director will prepare a notice of intent to terminate, which is a type of draft permit.

(B) A draft permit will contain all proposed permit conditions.

(4) Fact sheets. The director will prepare a fact sheet to accompany every draft permit that the director finds is the subject of widespread public interest or raises important issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The fact sheet will include information satisfying the requirements of 40 Code of Federal Regulations §124.8(b).

(5) Notice.

(A) The commission will give notice when a draft permit is prepared under paragraph (3) of this subsection, and when a hearing is scheduled under paragraph (7) of this subsection.

(B) Notice will be given by the methods specified in this subparagraph.

(i) A copy of the notice will be mailed to the following persons:

(I) any agency that the commission knows has issued or is required to issue a permit for the same facility under any federal or state environmental program;

(II) the United States Environmental Protection Agency;

(III) persons on a mailing list developed according to 40 Code of Federal Regulations §124.10(c)(1)(viii);

(IV) any unit of local government having jurisdiction over the area where the facility is or is proposed to be located, and each state agency having any authority under state law with respect to the construction or operation of the facility;

(V) the operator; and

(VI) any oil and gas operators or surface owners required to be listed in the application under subsection (d)(4)(F) and (G) of this section. If, pursuant to subsection (d)(4)(G), the director waived the requirement to list certain surface owners in the application, the applicant shall notify such persons by publishing the notice. The notice shall be published by the applicant once each week for two consecutive weeks in a newspaper of general circulation for the county where the facility is located. The applicant shall file proof of publication with the commission in Austin.

(ii) The notice shall be published by the applicant at least once in a newspaper of general circulation for the county where the facility is located. The applicant shall file proof of publication with the commission in Austin.

(C) Notices will include information satisfying the requirements of 40 Code of Federal Regulations §124.10(d) and the Administrative Procedure and Texas Register Act.

(D) A copy of any draft permit, fact sheet, and application will be mailed to the persons notified under subparagraph (B)(i)(I) and (II) of this paragraph, and to any other person upon request. The applicant will be mailed a copy of any draft permit and fact sheet.

(E) The Texas Commission on Environmental Quality, the Texas Water Development Board, the Texas Department of Health, the Texas Parks and Wildlife Department, the United States Fish and

Wildlife Service, other state and federal agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, state historic preservation officers, and other appropriate government authorities will be given opportunity to receive copies of notices, applications, draft permits, and fact sheets.

(6) Comments and requests for hearing. Notice of a draft permit will allow at least 30 days for public comment. During the public comment period, any interested person may submit written comments on the draft permit and may request a hearing if one has not already been scheduled.

(7) Hearings on draft permits.

(A) A hearing will be held:

(i) when the director finds, on the basis of requests, a significant degree of public interest in a draft permit;

(ii) when an applicant or an affected person requests a hearing on a draft permit; or

(iii) when an operator requests a hearing on a draft permit prepared when the director tentatively decides to modify, revoke and reissue, or terminate a permit.

(B) The commission may hold a hearing at its discretion, for instance, when a hearing might clarify one or more issues involved in the permit decision.

(C) Notice of a hearing will be given at least 30 days before the hearing. The public comment period under paragraph (6) of this subsection will automatically be extended to the close of any hearing under this paragraph.

(8) Administrative approval. After the close of the public comment period, the director may issue, modify, revoke and reissue, or terminate a permit administratively if no hearing is required under paragraph (7) of this subsection.

(9) Response to comments. When a final permit is issued, the commission will respond in writing to comments received during the public comment period. The response will be made available to the public and will:

(A) specify which provisions, if any, of the draft permit have been changed in the final permit, and the reasons for the changes; and

(B) briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing on the draft permit.

(j) Commission review of administrative actions. Administrative actions performed by the director or commission staff pursuant to this section are subject to review by the commissioners.

(k) Federal regulations. All references to the Code of Federal Regulations in this section are references to the 1987 edition of the Code. The following federal regulations are adopted by reference and can be obtained at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711: 40 Code of Federal Regulations §§124.8(b), 124.10(c)(1)(viii), 124.10(d), and 146.8(d). Where the word "director" is used in the adopted federal regulations, it should be interpreted to mean "commission."

(l) Effective date. This section becomes effective upon approval of the commission's Class III Underground Injection Control (UIC) Program for brine mining injection wells by the United States Environmental Protection Agency under the Safe Drinking Act, §1422 (42 United States Code §300h-1).

§3.85. Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cargo manifest--One or more documents that together contain the information required by subsection (c) of this section. That part of a manifest which contains information unique to the particular transport being described (such as date and time of removal) must be part of a book, tablet, or series, wherein the documents are sequentially numbered.

(2) Commission--The Railroad Commission of Texas.

(3) Facility--Any place used to store, process, refine, reclaim, dispose of, or treat liquid hydrocarbons.

(4) Lease--A well producing oil, gas, or oil and gas, and any group of contiguous wells producing oil, gas, or oil and gas of any number operated as a producing unit.

(5) Liquid hydrocarbons--Unrefined oil or condensate, and refined oil or condensate to be blended with unrefined liquid hydrocarbons.

(6) Oil tanker vehicle--A motor vehicle licensed for highway use on a public highway or used on a public highway:

(A) that is equipped with, carrying, pulling, or otherwise transporting an assembly, compartment, tank, or other container that is used for transporting, hauling, or delivering liquids; and

(B) that is being used to transport liquid hydrocarbons on a public highway.

(7) Public highway--A way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, even if the way or place is temporarily closed for the purpose of construction, maintenance, or repair.

(8) Transporter--Each gatherer, storer, or other handler of liquid hydrocarbons who moves or transports those liquid hydrocarbons by truck or other motor vehicle, provided however, that the provisions of this rule do not apply to:

(A) common carriers as defined in the Natural Resources Code, Chapter 111; or

(B) the movement of salt water, brine, sludge, drilling mud, or other liquid or semiliquid material if the commission has authorized the entity to move such material and such material contains less than 7.0% liquid hydrocarbon, by volume, or if not authorized by the commission, the movement is not for hire and the material moved does not contain more than 7.0% liquid hydrocarbons by volume.

(b) A cargo manifest must be carried in each oil tanker vehicle transporting liquid hydrocarbons on a public highway in this state and must be presented on request for inspection as provided by subsection (f) of this section.

(c) For each load of liquid hydrocarbons loaded onto and transported by an oil tanker vehicle, the cargo manifest must include:

(1) an identification of the lease or facility from which the liquid hydrocarbons were removed, which must include:

(A) the lease or facility name; and

(B) the name of the operator of the lease or facility;

(2) the total quantity of liquid hydrocarbons removed from the lease or facility and loaded onto the oil tanker vehicle; provided

that for purposes of indicating quantity on the copy of the manifest left with the lease operator, top and bottom gauges will suffice. On the other copies, an estimate in barrels must be included;

(3) the date and hour when the liquid hydrocarbons were removed from the lease or facility and loaded onto the oil tanker vehicle;

(4) the identity of the transporter which must include;

(A) the company or individual transporter's name and address;

(B) the oil tanker vehicle driver's name; and

(C) a unique number for the oil tanker vehicle that for a truck tractor and semitrailer type oil tanker vehicle must include unique vehicle numbers for both truck tractor and semitrailer; and

(5) the intended point of destination for the liquid hydrocarbons, including the name of the receiving facility.

(d) Copy of manifest to be left at the lease.

(1) A copy of the cargo manifest must be left at the lease or facility from which the liquid hydrocarbons were removed or delivered to the lease or facility operator, his agent, or his representative.

(2) The requirements of this section may be met by leaving a separate document at the lease or facility from which the liquid hydrocarbons were removed or by delivering to the lease or facility operator a separate document that includes information required under subsection (c)(1)-(3) and (4)(A) and (B) this section.

(3) If more than one load of liquid hydrocarbons is removed from a single tank or other container of liquid hydrocarbons within a period of 24 consecutive hours, subsection (c)(2) and (3) of this section may be met for purposes of this section by a separate document that includes:

(A) the total quantity of liquid hydrocarbons removed;

(B) the date and hour the first load was removed; and

(C) the date and hour the last load was removed.

(4) If the operator of a facility requires that a transporter leave at the facility or deliver to the operator a document other than the transporter's cargo manifest, a transporter may meet the requirements of this section by leaving those specified documents at an agreed location or delivering the document to the operator.

(e) After the delivery of all liquid hydrocarbons in an oil tanker vehicle is completed, the cargo manifest must be maintained in the records of the transporter for a period of not less than two years from the date the liquid hydrocarbons are removed from the oil tanker vehicle.

(f) Upon request from a commission agent or other law enforcement official the transporter must produce the cargo manifest for inspection immediately, whether it is on an oil tanker vehicle or in the records of the transporter. Copies of cargo manifests must be filed with the commission, upon request from the commission.

(g) Companies or individuals who do not have organization reports (Form P-5) on file with the Railroad Commission, as required by Rule 1 (§3.1 of this title (relating to Organization Name To Be Filed and Records To Be Kept)), may not issue cargo manifests.

(h) Every truck or other vehicle covered by this section shall bear on both sides thereof the name of the company or individual responsible for such transportation, the number of the vehicle, and the number of the certificate or permit authorizing the service. In the case of vehicles not for hire, this number shall be the company's organizational report (P-5) number. The identifying signs shall be printed in letters not less than two inches in height, in sharp color contrast to the background, and shall be plainly legible for a distance of at least 50 feet.

§3.93. Water Quality Certification Definitions.

(a)-(c) (No change.)

(d) Notice of Request for Certification.

(1) (No change.)

(2) Notice by Applicant. If a joint notice is not used as provided in paragraph (1) of this subsection, the applicant must mail notice of the request for certification on or before the date the request for certification is filed with the commission. Such notice shall include the information required in paragraph (3) of this subsection. The applicant shall provide notice by first class mail to:

(A)-(C) (No change.)

(D) the Texas Commission on Environmental Quality (TCEQ) or its successor agencies [~~Natural Resource Conservation Commission~~];

(E)-(H) (No change.)

(3)-(4) (No change.)

(e)-(h) (No change.)

§3.99. Cathodic Protection Wells.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(2) (No change.)

(3) Protection depth--Depth or depths at which usable quality water must be protected or isolated, as determined by the Texas Commission on Environmental Quality (TCEQ) or its successor agencies [~~Water Commission~~].

(4) (No change.)

(b) (No change.)

(c) Determination of protection depth. Before drilling any cathodic protection well, an operator shall obtain a letter from the TCEQ [~~Texas Water Commission~~] stating the protection depth or depths.

(d)-(f) (No change.)

(g) Reporting. Within 30 days of completion of the last well in a project area, the operator shall submit a letter to the commission stating that each cathodic protection well in the project area has been completed in accordance with subsection (e) of this section. The letter must include the completion date for each well, the name and address of the operator, and the drilling permit and API numbers of the well, if applicable. A plat of the project area identifying cathodic protection well locations, counties, survey lines, scale, and northerly direction must be attached. In addition, a letter from the TCEQ [~~Texas Water Commission~~] stating the protection depth or depths must be attached.

(h) (No change.)

~~[(i) Superconducting super collider. No provision of this section exempts any operator from compliance with §3.78 of this title (relating to Drilling Operations in the Vicinity of the Superconducting Super Collider, Ellis County) (Statewide Rule 82).]~~

§3.100. Seismic Holes and Core Holes.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Core hole--Any hole drilled for the purpose of securing geological information to be used in the exploration or development of oil, gas, geothermal, or other mineral resources, except coal or uranium. For regulations governing coal exploratory wells, see Chapter 12 [~~§11.221~~] of this title (relating to Coal Mining [~~State Program~~] Regulations) [~~(Statewide Rules 816.331-816.333)~~], and for regulations governing uranium exploratory wells, see Chapter 11, Subchapter C [~~§§11.136-11.139~~] of this title (relating to Surface Mining and Reclamation Division, Substantive Rules--Uranium Mining [~~Notice of Exploration Involving Hole Drilling, Permit, Reclamation and Plugging Requirements, and Reporting~~]).

(3) (No change.)

(4) Protection depth--Depth or depths at which usable quality water must be protected or isolated, as determined by the Texas Commission on Environmental Quality (TCEQ) or its successor agencies [~~Water Commission~~].

(5)-(6) (No change.)

~~[(b) Superconducting super collider. No provision of this section exempts any operator from compliance with §3.78 of this title (relating to Drilling Operations in the Vicinity of the Superconducting Super Collider, Ellis County) (Statewide Rule 82).]~~

(b) [~~(c)~~] Exemption. Any seismic hole or core hole drilled to a depth of 20 feet or less is not subject to the requirements of this section.

(c) [~~(d)~~] Determination of protection depth. Before drilling any seismic hole or core hole in a project area, an operator shall obtain a letter from the TCEQ [~~Texas Water Commission~~] stating the protection depth or depths in the project area.

(d) [~~(e)~~] Drilling permits.

(1) Holes that do not penetrate any protection depth. A seismic hole or core hole that does not penetrate any protection depth does not require a drilling permit.

(2) Holes that penetrate any protection depth. A seismic hole or core hole that penetrates any protection depth requires a drilling permit to satisfy the requirements for exploratory wells described in §3.5(g) of this title (relating to Application To Drill, Deepen, Reenter, or Plug Back) (Statewide Rule 5).

(e) [~~(f)~~] Plugging.

(1) Holes that do not penetrate any protection depth. A seismic hole or core hole that does not penetrate any protection depth must be plugged in accordance with subparagraph (A) or (B) of this paragraph. Seismic holes must be plugged after the hole is loaded with explosives. Core holes must be plugged immediately after completion of coring the hole.

(A) The operator shall adequately plug the hole by filling it from total depth to a depth of no more than 16 feet below the surface with drill cuttings and/or bentonite. Immediately above the drill cuttings and/or bentonite, the operator shall place a bentonite plug no less than 10 feet in length. A plastic cap imprinted with the name of the operator shall be set above the bentonite plug no less than three feet below the surface. The remainder of the hole shall be filled with drill cuttings or native soil. All precautions should be taken to prevent bentonite from bridging over.

(B) Alternative plugging procedures and materials may be utilized when the operator has demonstrated to the commission's satisfaction that the alternatives will protect usable quality water.

(2) Holes that penetrate any protection depth. A seismic hole or core hole that penetrates any protection depth must be plugged in accordance with the requirements of §3.14 of this title (relating to Plugging) (Statewide Rule 14) and a plastic cap imprinted with the name of the operator shall be set in the hole no less than three feet below the surface.

(f) [~~(g)~~] Physical requirements for bentonite plugging materials. Bentonite materials used to plug seismic or core holes shall be derived from naturally occurring, untreated, high swelling sodium bentonite that is composed of at least 85% montmorillonite clay and that meets the International Association of Geophysical Contractors (IAGC) recommended geophysical industry standard dated January 24, 1992, for the physical characteristics of bentonite used in seismic shot hole plugging.

(g) [~~(h)~~] Reporting.

(1) Holes that do not penetrate any protection depth. Within 30 days of plugging the last hole in the project area, the operator shall submit a letter to the commission stating that each seismic hole or core hole in the project area has been plugged in accordance with subsection (e)(1) [~~(f)(1)~~] of this section. The letter must include the plugging date for each hole and the name and address of the operator. A plat of the project area identifying seismic or core hole locations, counties, survey lines, scale, and northerly direction must be attached. A United States Geological Survey map of the project area with hole locations marked will satisfy the plat requirement. In addition, a letter from the TCEQ [~~Texas Water Commission~~] stating the protection depth or depths must be attached.

(2) Holes that penetrate any protection depth. For any seismic or core hole that penetrates any protection depth, a plugging record shall be filed in accordance with §3.14 of this title (relating to Plugging) (Statewide Rule 14).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303494
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 475-1295

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16 TAC §§3.65 - 3.67, 3.69, 3.72, 3.75, 3.77

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals, new sections, and amendments pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells and persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations

under Commission jurisdiction and pursuant to Texas Natural Resources Code §§85.042, 85.202, 86.041 and 86.042 which require the Commission to adopt rules to control waste of oil and gas.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.024, 85.202, 86.041, and 86.042.

Cross-reference to statute: Texas Natural Resources Code, §§81.051 and 81.052 and §§85.042, 85.202, 86.041 and 86.042.

Issued in Austin, Texas, on June 10, 2003.

§3.65. Pipeline Permits Required.

§3.66. Pipeline Tariffs.

§3.67. Obtaining Pipeline Connections.

§3.69. Definitions.

§3.72. Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle.

§3.75. Discharges to Waters of the State.

§3.77. Brine Mining Injection Wells.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303495
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 475-1295

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CHAPTER 9. LP-GAS SAFETY RULES
SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.2, 9.9, 9.51 - 9.54

The Railroad Commission of Texas (Commission) proposes amendments to §§9.2, 9.9, and 9.51 - 9.54, relating to Definitions; Requirements for Certificate Renewal; General Requirements for Training and Continuing Education; Training and Continuing Education Courses; Continuing Education Credit for Previous Courses; and Commission-Approved Outside Instructors. The main purpose of this rulemaking is to update the rules to reflect new courses that have been added to the Commission's training and continuing education curriculum, to add new categories of certificate holders who will be required to complete training and continuing education, and to increase the annual examination renewal fee in §9.9 from $25 to $35.

In §9.2, the Commission proposes to add new definitions for "AFT materials," "applicant" and "certificate holder"; to revise the definition of "CETP" to reflect the recent transfer of ownership of that program from the National Propane Gas Association to the Propane Education and Research Council; to revise the definition of "outside instructor" to clarify that classes taught by approved outside instructors may be presented for Railroad Commission training credit as well as for continuing education credit; to clarify the definition of "training"; and to renumber the remaining definitions. The three new definitions are proposed for clarification and do not substantively change current Commission policies or procedures.

Section 9.9(c) includes the proposed increase in the annual certificate renewal fee from $25 to $35. This fee is the primary source of funding for the training and continuing education program for the approximately 10,000 LP-gas certificate holders. Other proposed new language in §9.9(c) expressly states that governmental employees do not have to pay this fee and, in subsection (c)(1), clarifies the dates of the two-year period during which an individual whose certification has lapsed may pay a late-filing fee instead of complying with the requirements for a new certificate. Other clarifying language is proposed in subsection (d) regarding lapsed certifications.

Throughout §§9.51 - 9.54, some nonsubstantive changes have been proposed, mainly with regard to the use of the word "course." The Commission will use the word "course" to refer to each individual course of instruction included in the Commission's curriculum. The Commission will use the word "class" to refer to a particular session held at a specific time and place.

The Commission proposes substantive amendments in §9.51(b) regarding failure to comply with a training or continuing education requirement by an assigned deadline and the payment of late-filing fees. In subsection (b)(1), the Commission proposes to extend training and continuing education requirements to Category D, F, G, J, and K applicants and certificate holders. Categories D, F, G, J, and K are being added to the currently covered Category E and Category I to increase public safety by training approximately 400 additional individuals whose jobs require them to handle propane in Texas. The Commission has increased the number and types of courses offered in its training and continuing education program to accommodate certificate holders in these additional categories.

In §9.51(d), the Commission proposes new language to clarify that an individual who is required to pay a fee for a class may not receive credit for the class until the fee is paid in full.

In §9.51(e), the Commission proposes to update class schedules on its web site monthly, rather than twice a year, to ensure that current schedule information is available timely.

In §9.51(f)(1), the Commission proposes to delete the requirement that registration forms be filed with the AFRED training section at least seven calendar days prior to a class. The Commission would rather have the classes be well attended, instead of having vacancies in a class because an individual was late in getting the registration form to the Commission. Also in subsection (f)(1), the Commission has added to the required registration information the registrant's level and category of certification, to ensure that applicants and certified individuals register for the proper course. In subsection (f)(2)(A), Categories F and G are proposed to be added to Category I, currently in the rule, in the references to the 16-hour required course of instruction. New language is also proposed with regard to eight-hour and 80-hour classes. New subparagraph (B) clarifies that the class fee does not include the rules examination fee or the license fee. Also, a new sentence is proposed in subparagraph (C) to state that current certificate holders who have paid the annual renewal fee and who want to add a new certification other than a Category E, F, G, or I shall not be required to pay the $75 class fee. In subsection (f)(2)(B), the Commission has deleted the reference

to courses P115, P116, and P117. These courses are no longer offered.

In §9.51(f)(2), the Commission proposes to add a new subparagraph (E). The new subparagraph will allow individuals or governmental subdivisions to request that the Commission conduct a non-credit course and authorize the Commission to do so if an instructor is available to teach the requested course and enough students have registered. The new language also establishes the fees for such courses.

In subsection (f)(3), the Commission has added language to clarify its current practices when registering individuals for classes. The proposed language clarifies that priority for registering in eight-hour classes will be given to individuals whose renewal deadline is the soonest, and priority for registering in 16-hour and 80-hour classes is based on the date the course fee is paid. Other proposed new language allows the AFRED training section to reschedule individuals who were registered for a class that was cancelled.

Other changes proposed in §9.51 are nonsubstantive and involve changes in wording, organization, or punctuation for clarity.

In §9.52(a), the Commission has added the same categories added in §9.51(b)(1). Proposed new wording specifically states that Category E applicants shall attend the 80-hour course; Categories F, G, and I applicants shall attend the 16-hour course; and all other applicants shall attend an eight-hour course. The corresponding new categories are also added to subsection (a)(1), with one exception: New subsection (a)(1)(K) includes appliance service and installation employee-level applicants. This group was already included in the rules, but was not listed in subsection (a)(1), and is added now for clarification. Another clarification is proposed in subsection (a)(3), which adds a reference to AFT requirements, and in subsection (a)(4), where the cross-reference to §9.17 is corrected from subsection (e) to subsection (g).

Current §9.52(b) specifies how the Commission phased in the continuing education requirements for certificate holders when this rule was first adopted in February 2001 and amended in May 2001 by assigning renewal dates randomly over the following four years. This random assignment was necessary in order for the Commission's training staff to train the approximately 10,000 certificate holders in existence at that time. Now that this initial random assignment has taken place, the language in subsection (b)(1) proposed to be deleted is no longer necessary. New language is proposed in subsection (b) to clarify how the four-year continuing education deadline will be determined. Proposed language is also added to subsection (b)(1)(A) to add the same new categories that were added in subsection (a)(1) of this rule.

In a substantive amendment, the Commission proposes new §9.52(b)(1)(B) to specify May 31, 2005, as the deadline for current Category D, F, G, J, and K certificate holders who have only one certification as of the effective date of these amendments to complete their continuing education requirement. Current Category D, F, G, J, and K certificate holders who hold more than one certification as of the effective date of these amendments shall complete their continuing education requirement by their current assigned continuing education deadline. In paragraph (3), a new sentence is proposed to clearly state that governmental employees are not required to pay the annual certificate renewal fee.

New §9.52(c) is proposed to clarify that the Commission's Train-the-Trainer classes do not count for training or continuing education credit. This wording clarifies that Category D or E certificate holders who are approved outside instructors must comply with all course requirements for each of those activities and may not receive "double credit" for one course.

Section 9.52(f) deals with advanced field training (AFT). The Commission has proposed some clarifying amendments and deleted the requirements that completed AFT certification paperwork be submitted to the Commission. The Commission proposes to require the AFT to be properly completed within 30 calendar days of attending a class. All of the qualification tasks must be completed, including the AFT qualification checklist. The Commission proposes that completed AFT materials, including the certification page, shall be retained and readily available for inspection by an authorized person at a licensee's business location in Texas. In paragraph (1), proposed new wording states that the responsibility for certifying AFT shall not be delegated to an unauthorized individual. New paragraph (2) is proposed to illustrate different scenarios related to the retention of AFT materials and to clarify who is responsible for keeping the AFT materials. Additionally, the proposed text will clarify that all the performance tasks in the AFT certificate must be completed. In paragraph (3), renumbered from (2), Categories F and G are added to Category I with respect to required completion of the 16-hour management course.

Existing subsection (f) regarding computer-based continuing education courses is proposed to be repealed. The Commission wishes to avoid the cost of updating its current computer-based courses in light of the recent decline in usage. However, as specified in §9.53(2), the Commission proposes to continue to award credit for computer-based courses through September 1, 2003.

The Commission proposes some substantive changes in §9.52(g) to divide into four tables the current single table that lists each course offered and specifies which certificate holders may complete that course for training or continuing education credit. The proposed four-table format is more specific and better organized. With the addition of Categories D, F, G, J, and K to the training and continuing education program, the information in the tables has been expanded to include those categories. In particular, the changes are as follows:

1. Dates have been added following the title of each table. As the tables are revised in future rulemakings, the date will be changed to a "Revision" date.

2. The Commission has added the following new courses indicated on Tables 1 and 2: 2.2/2.4, Inspecting, Requalifying, Filling and Transporting DOT Cylinders; and Evacuating, Transporting, Maintaining and Refitting ASME Tanks; 3.1, Residential Propane System Layout and Design; 3.2, Residential Propane System Installation; 3.7, Electrical Troubleshooting and Repairing Residential Gas Appliances; 3.11, Residential Propane System Inspection; and 6.1, Regulatory Compliance.

3. The first table, entitled "LP-Gas Management-Level Training and Continuing Education Courses," includes Categories D, E, F, G, I, J, and K management-level courses, course numbers, hours, and titles, and indicates whether AFT is included. An "x" in the row for a particular course indicates the course is approved for the corresponding license category. For example, a Category D management-level applicant or certificate holder who will be required to attend training or continuing education may take course 1.1, 3.1, 3.2, 3.5, 3.7, 3.11, or the 80-hour course.

4. Table 2, entitled "LP-Gas Employee-Level Training and Continuing Education Courses," lists employee-level courses. As compared to the current table in §9.52, in the segment of

the table entitled "Railroad Commission Training and Continuing Education Courses Available After September 1, 1997," some courses have been eliminated and some courses have been added. The following courses will no longer be offered: P109A, Appliance Installation; P113A, Appliance Service Persons Overview; P115, GAS Check (3 days); P116, GAS Check (2 days); P117, GAS Check (self-study); P120, Bulk Plant Management; P121, Propane Distribution Systems; and P122, Residential Systems Safety Inspection--Appliances and Exterior. These courses do not appear on any of the new tables.

5. In Table 3, entitled "Courses Which Count Towards Continuing Education Credit For Management-Level Certificate Holders," and Table 4, entitled "Courses Which Count Towards Continuing Education Credit For Employee-Level Applicants or Certificate Holders," the Propane Education and Research Council's (PERC) GAS Check course (formerly offered by the National Propane Gas Association (NPGA)) has been added. The two tables are divided to show which courses apply to management-level certificate holders and which courses apply to employee-level certificate holders.

Section 9.53 covers continuing education credit for previous courses. This section was originally adopted to allow certificate holders who had taken Commission courses prior to the establishment of the training and continuing education program to receive credit for those courses in certain instances. Only nonsubstantive changes are proposed in this rule, namely a clarification of the random assignment of initial due dates as previously discussed in the corresponding amendment to §9.52(b). In paragraph (2), a date of September 1, 2003, is added to indicate the date on which credit will no longer be given for completing the Commission's current computer-based courses.

Section 9.54 covers the requirements for Commission-approved outside instructors. In subsection (a)(1), the Commission proposes to add that outside instructors may also offer training classes for specified management-level and employee-level applicants, as well as continuing education for current certificate holders. Proposed new subparagraphs (A) and (B) add that Category D certificate holders may also become outside instructors and clarify what courses may be offered by a Category D or Category E outside instructor. Subsection (b) also includes some nonsubstantive new language regarding the outside instructor application process for Category D.

In subsection (h), the Commission has proposed a new Train-the-Trainer refresher course that outside instructors must attend prior to their next renewal deadline. The new refresher course replaces the previous requirement that an outside instructor must teach at least one course each year to maintain certification as an outside instructor and will help ensure that outside instructors know current rules and requirements. As with the proposed language in §9.52(c), new language in §9.54(j)(1) states that the Train-the-Trainer class will not count towards a Category D or E applicant's or certificate holder's training or continuing education requirement.

Dan Kelly, Director, Alternative Fuels Research and Education Division, has determined that, for each year of the first five years that the amendments are proposed to be in effect, there will be no fiscal implications for state or local governments. The effect on the Commission of the addition of the Category D, F, G, J, and K certificate holders will be minimal. There are about 400 Category D certificate holders, and only a few certificate holders each for Categories F, G, J, and K. By spreading the due date for these 400 or so individuals over the period between the effective date of these amendments and May 31, 2005, the Commission can handle the additional registrations within current budget and staffing limitations.

One effect on the Commission concerns the new $250 and $500 charges proposed in §9.51(f)(2)(E). The Commission regularly receives requests for classes on LP-gas laws and practices from entities such as recreational vehicle companies who have employees that are not currently required to attend an LP-gas training or continuing education class. The Commission views these classes as important in ensuring safety and makes every effort to comply with such requests. However, the Commission can no longer provide these classes at no cost to the requesting entities. Therefore, the Commission has proposed a charge of $250 for a class that staff can provide during one day without an overnight stay, and a charge of $500 for a class that requires an overnight stay. These charges will enable the Commission to recover its costs and continue to provide this training. These courses are not part of the training and continuing education program required by §§9.51 - 9.54, and no training or continuing education credit will be awarded for completing these courses. The proposed fees will allow these non-credit classes to be self-sustaining, instead of being funded by the individuals that pay the annual certificate renewal fee. A political subdivision such as a fire department is not required to pay this fee.

The proposed $250 and $500 fees are based on the following average expenses involved in conducting these non-credit classes:

Figure: 16 TAC Chapter 9--Preamble

Mr. Kelly has also determined that, for each year of the first five years the amendments are proposed to be in effect, the public benefit anticipated as a result of enforcing the amendments will be improved LP-gas safety through better trained LP-gas industry managers and employees, and clarification of requirements.

There is an anticipated economic cost to individuals, small businesses, or micro-businesses required to comply with the proposed amendments which add Categories D, F, G, J, and K management-level and employee-level certificate holders to the training and continuing education program. The costs for training (which applies only to applicants for new management-level or employee-level certificates) will be the cost for the courses as specified in §9.51(f)(2), and will depend on which course the applicant chooses to take and whether any travel is involved for the applicant to attend the course. The costs for continuing education (which applies to current certificate holders) will involve only travel costs, because the continuing education classes are offered at no charge to individuals who have paid their annual examination renewal fee.

The annual examination renewal fee is proposed to be increased from $25 to $35 in §9.9(c). The Commission finds that this increase is necessary to allow the Commission to continue to deliver the approximately 2,600 contact hours of training and continuing education per year needed to sustain the requirements of §§9.51 - 9.54 and to comply with the legislative directive that the Commission's LP-gas safety programs be financially self-sustaining.

Railroad Commission Rider 7 of the 2004-2005 General Appropriations Act appropriates LP-gas examination renewal fee receipts to the Commission for the purpose of providing training to licensees and certificate holders. About 10,000 LP-gas certified individuals renew their examinations each year; accordingly, the proposed $10 increase will provide an estimated additional

$100,000 annually for training purposes. This increase will replace 74 percent of the $135,718 of General Revenue the Commission devoted to the LP-gas training and continuing education program during fiscal year 2003. The remaining $35,718 of General Revenue will be made up by cost-saving measures, funding from other non-General Revenue sources, or by a combination of the two.

The proposed changes in the rules will not result in any additions to the AFRED training database because no new records need to recorded and reported. New courses will be added to the course tables, and additional examination categories will be incorporated in the table. The effort required to make these changes is small and is part of the regular database maintenance.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Thomas Petru at (512) 463-6930. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission simultaneously proposes the review and readoption of §§9.2, 9.9, and 9.51 - 9.54 in accordance with Texas Government Code, §2001.039. The notice of proposed review will be filed with the *Texas Register* concurrently with this proposal.

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §113.051

Cross-reference to statute: Texas Natural Resources Code, §113.051

Issued in Austin, Texas on June 10, 2003.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advanced field training (AFT)--The final portion of the training or continuing education requirements in which an individual shall successfully perform the specified LP-gas activities in order to demonstrate proficiency in those activities.

(2) AFRED--The Commission's Alternative Fuels Research and Education Division.

(3) AFT materials--The portion of a Commission training module manual consisting of the four sections of the Railroad Commission's LP-Gas Employee Qualifying Field Activities, including General Instructions, the Task Information, the Operator Qualification Checklist, and the Railroad Commission Record and Employer Record.

(4) [~~(3)~~] Aggregate water capacity (AWC)--The sum of all individual container capacities measured by weight or volume of water which are placed at a single installation location.

(5) Applicant--An individual:

(A) who is applying for a new certificate; or

(B) whose certification has lapsed for a period of less than two years and who is applying to restore certification by paying any applicable fees and by completing any applicable training or continuing education requirements.

(6) [~~(4)~~] Assistant director--The assistant director of the LP-Gas Safety Section who is the Commission's delegate responsible for the enforcement of the LP-Gas Safety Rules and the Texas Natural Resources Code.

(7) [~~(5)~~] Breakaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a breakaway device.

(8) [~~(6)~~] Categories of LPG activities--The LP-gas license categories as specified in §9.6 of this title (relating to Licenses and Fees).

(9) Certificate holder--An individual:

(A) who has passed the required management-level qualification examination, satisfactorily completed any applicable training or continuing education requirements, and paid the applicable fee; or

(B) who has passed the required employee-level qualification examination, paid the applicable fees, and complied with the training or continuing education requirements in §9.52 of this title (relating to Training and Continuing Education Courses); or

(C) who has passed the required management-level qualification examination or employee-level qualification examination, has paid the applicable fee, and is required to comply with a training or continuing education requirement.

(10) [~~(7)~~] Certified--Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(11) [~~(8)~~] CETP--The Propane Education and Research Council's [~~National Propane Gas Association's~~] Certified Employee Training Program.

(12) [~~(9)~~] Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, retail LP-gas cylinder filling/exchange operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

(13) [~~(10)~~] Commission--The Railroad Commission of Texas.

(14) [~~(11)~~] Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.

(15) [~~(12)~~] Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.

(16) [~~(13)~~] Continuing education--Courses required to be successfully completed at least every four years by certain certificate holders.

(17) [~~(14)~~] DOT--The United States Department of Transportation.

(18) [~~(15)~~] Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, or, for purposes of this chapter, an owner-employee.

(19) [~~(16)~~] Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.

(20) [~~(17)~~] Licensed--Authorized to perform LP-gas activities through the issuance of a valid license.

(21) [~~(18)~~] Licensee--A person which has applied for and been granted an LP-gas license by the Commission.

(22) [~~(19)~~] LP-Gas Safety Rules--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at www.sos.state.tx.us or through the Commission's web site at www.rrc.state.tx.us.

(23) [~~(20)~~] LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(24) [~~(21)~~] Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(25) [~~(22)~~] Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(26) [~~(23)~~] Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(27) [~~(24)~~] Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of the American Society of Testing Material (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(28) [~~(25)~~] Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(29) [~~(26)~~] Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas operations.

(30) [~~(27)~~] Outlet--A site operated by an LP-gas licensee at which the business conducted materially duplicates the operations for which the licensee is initially granted a license.

(31) [~~(28)~~] Outside instructor--An individual other than a Commission employee approved by the Commission to teach certain [~~an~~] LP-gas training or continuing education courses [~~course~~].

(32) [~~(29)~~] Person--An individual, partnership, firm, corporation, joint ventureship, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(33) [~~(30)~~] Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(34) [~~(31)~~] Property line--The boundary which designates the point at which one real property interest ends and another begins.

(35) [~~(32)~~] Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(36) [~~(33)~~] Register (or registration)--The procedure to inform the Commission of the use of an LP-gas transport or container delivery unit in Texas.

(37) [~~(34)~~] Repair to container--The correction of damage or deterioration to an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(38) [~~(35)~~] Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current LP-Gas Safety Rules.

(39) [~~(36)~~] School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(40) [~~(37)~~] School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(41) [~~(38)~~] Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(42) [~~(39)~~] Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(43) [~~(40)~~] Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(44) [~~(41)~~] Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(45) [~~(42)~~] Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain [~~new~~] certificates.

(46) [~~(43)~~] Transfer--The procedure to inform the Commission of a change in operator of an LP-gas transport or container delivery unit already registered with the Commission.

(47) [~~(44)~~] Transfer system--All piping, fittings, valves, and equipment utilized in dispensing LP-gas between containers.

(48) [~~(45)~~] Transport--Any bobtail or semitrailer equipped with one or more containers.

(49) [~~(46)~~] Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(50) [~~(47)~~] Ultimate consumer--The individual controlling LP-gas immediately prior to its ignition.

§9.9. Requirements for Certificate Renewal.

(a) Active status. In order to maintain active status, certificate holders shall comply with the applicable continuing education requirements in this section.

(b) Certificate renewal date. The Commission shall notify licensees of any employees' pending renewals, or shall notify the individual if not employed by a licensee, in writing, at the address on file with the Commission no later than March 15 of a year for the May 31 renewal date of that year.

(c) Certificate holders shall pay the $35 [~~$25~~] annual certificate renewal fee to the Commission on or before May 31 of each year. Individuals who hold more than one certificate shall pay only one annual renewal fee. An employee of a state agency, county, municipality, school district, or other governmental subdivision is not required to pay the annual certificate renewal fee.

(1) Failure to pay the annual renewal fee by the deadline shall result in a lapsed certification. To renew a lapsed certification, the individual shall pay the $35 [~~$25~~] annual renewal fee plus a $20 late-filing fee. Failure to do so shall result in the expiration of the certificate. If an individual's certificate has been expired for more than two years from May 31 of the year in which certification lapsed, that individual shall comply with the requirements for a new certificate.

(2) Upon receipt of the annual renewal fee and any late-filing penalty, the Commission shall verify that the individual's certification has not been suspended, revoked, or expired for more than two years. After verification, the Commission shall renew the certification and the individual may continue or resume LP-gas activities authorized by that certification.

(d) Continuing education. Certificate holders shall successfully complete the continuing education requirements as specified in §§9.51 - 9.53 of this title (relating to General Requirements for Training and Continuing Education; Training and Continuing Education Courses; and Continuing Education Credit for Previous Courses).

(1) Failure to comply with the continuing education requirements by the assigned deadline shall result in a lapsed certification.

(2) If a certification lapses as specified in paragraph (1) of this subsection, the individual shall pay the $20 late fee.

§9.51. General Requirements for Training and Continuing Education.

(a) Effective March 1, 2001, individuals shall comply with the training and continuing education requirements in this chapter.

(b) Applicants for new licenses or new certificates, as set forth in §9.7 and §9.8 of this title (relating to Application for License and License Renewal Requirements, and Application for a New Certificate, respectively) and persons holding existing licenses or certificates shall comply with the training or continuing education requirements in this chapter. Any individual who fails to comply with the training or continuing education requirements by the assigned deadline may regain certification by paying the course fee and satisfactorily completing an authorized training or continuing education course within two years of the deadline. In addition to paying the course fee, the person shall pay any fee or late penalties to the LP-Gas Safety Section.

(1) The training requirements apply only to applicants for Category D, E, F, G, I, J, or K [~~E or I~~] management-level certificates and certain employee-level certificates.

(2) The continuing education requirements apply to:

(A) all management-level certificate holders and employee-level certificate holders as specified in the tables in [~~Table 1 of~~] §9.52 of this title (relating to Training and Continuing Education Courses); and

(B) any ultimate consumer who has purchased, leased, or obtained other rights in any LP-gas bobtail, including any employee of such ultimate consumer if that employee drives or in any way operates the equipment on an LP-gas bobtail.

(3) The training and continuing education requirements do not apply to:

(A) an ultimate consumer driving or fueling a motor vehicle powered by LP-gas;

(B) an individual who fuels motor vehicles as an employee of an ultimate consumer;

(C) an employee of a state agency, county, municipality, school district, or other governmental subdivision;

(D) an individual with a general installers and repairman exemption; or

(E) anyone certified only as a transport driver.

(4) Any employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision who is not required to complete the training or continuing education shall be properly supervised and trained by the employer in the maintenance and storage of LP-gas and vehicles fueled by LP-gas, and in the operation of equipment during the filling and dispensing of LP-gas.

(c) Individual credit. Successful completion of any required training or continuing education class shall be credited to and accrue to the individual.

(d) No partial credit. Individuals attending classes [~~courses~~] shall receive credit only if they attend the entire class, properly complete any AFT, and pay any training or continuing education course fees in full [~~course and complete any required AFT~~]. The Commission shall not award partial credit for partial attendance.

(e) Schedules. Dates and locations of available [~~all~~] Commission LP-gas training and continuing education classes can be obtained [~~courses/seminars shall be available~~] in the Austin offices of the Gas Services Division and AFRED, [~~at certain Commission district offices,~~] and on the Commission's web site at www.rrc.state.tx.us and shall be updated monthly [~~February 1 and June 1 of each year~~]. Commission classes [~~courses~~] shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that Commission classes [~~courses~~] be taught in their area. The Commission shall schedule its classes [~~courses~~] and locations at its discretion.

(f) Registering for a class [~~course~~].

(1) To register for a scheduled training or continuing education class [~~course~~], an individual shall complete the registration form provided by AFRED and file the form with the AFRED training section [~~at least seven calendar days~~] prior to the class [~~course~~]. AFRED shall also accept class [~~course~~] registrations via regular mail, electronic mail (e-mail), or facsimile transmission (fax); such requests shall include the applicant's full name, address, phone number, level (either manager or employee) and category of certification (such as cylinder filling or service and installation), e-mail [~~electronic mail~~] address, and the name or number, location, and date of the requested class [~~course~~].

(2) Costs for classes [~~courses~~].

(A) Each registration for a training class shall require the payment of the applicable nonrefundable class fee as follows:

(i) $75 for an initial eight-hour class;

(ii) $150 for the initial 16-hour Category F, G, and I class; and

(iii) $750 for the initial 80-hour Category E class.

(B) The Category E, F, G, and I class fees do not include the management-level rules examination or license fee described in §9.6 and §9.10 of this title (relating to Licenses and Fees, and Rules Examination, respectively).

(C) Current certificate holders who have paid the annual renewal fee and who want to add a new certification other than Category E, F, G, or I shall not be required to pay the $75 class fee.

[(A) Requests for training courses shall include the appropriate nonrefundable course fee of $75 for an eight-hour course, $150 for the 16-hour Category I training course, and $750 for the 80-hour Category E seminar. The Category E and I seminar fees do not include the fee to take the management-level rules examination which is described in §9.10 of this title (relating to Rules Examination).]

(D) [(B)] Continuing education classes [courses, other than courses P115, P116, and P117,] shall be offered at no charge to certificate holders who have timely paid the annual certificate renewal fee specified in §9.9 of this title (relating to Requirements for Certificate Renewal).

(E) Requests for classes where no training or continuing education class credit is given shall be submitted in writing to the AFRED training section. The AFRED training section may conduct the requested classes at its discretion. The fee for a non-credit class is $250 if no overnight expenses are incurred by the AFRED training section, or $500 if overnight expenses are incurred. A political subdivision is not required to pay the non-credit class fee.

(F) [(C)] The Commission may charge reasonable fees for materials for classes [GAS Check or similar courses] using third-party materials.

(3) The Commission shall schedule individuals to attend classes [courses] on a first-come, first-served basis, except as follows: [.]

(A) Priority for attending the 16-hour Category F, G, and I class, and the 80-hour Category E class is based on when the class fee is paid.

(B) Priority for attending classes other than the 16-hour Category F, G, and I class, and the 80-hour Category E class shall be given to applicants or certificate holders who must comply with training or continuing education requirements by the next May 31 deadline.

(C) If any class [course] has fewer than eight individuals registered within seven calendar days prior to the class [course], the Commission may cancel the class [course] and shall either refund any class [course] registration fees or shall reschedule the registered individuals in another class agreed upon by the individuals and the AFRED training section. The AFRED training section reserves the right to determine class sizes for all classes.

(4) If a previously registered individual is unable to attend the class [course] at the time and place for which the individual is registered due to illness or other unforeseen circumstances, another individual from the same company may attend that same class [course] in his or her place.

(5) Applicants who take classes [courses] offered by an entity other than the Commission shall comply with the registration, fee, and other requirements specified by that entity.

(g) Retention of records. Individual applicants or certificate holders [employees] shall be responsible for promptly notifying the AFRED training section in writing of any discrepancies or errors in the training or continuing education records, and shall notify the LP-Gas Safety Section of any [for] discrepancies or errors in examination records or certification cards. In the event of a discrepancy, the Commission's records, including due dates, shall be deemed correct unless the individual has copies of applicable documents which clarify the discrepancy.

§9.52. Training and Continuing Education Courses.

(a) Training. Applicants for a new certification [license or certificate] listed in this subsection, other than Category E, F, G, or I management-level individuals and except as stated in paragraph (4) of this subsection, shall attend at least eight hours of training prior to their first certificate renewal deadline of May 31 of the appropriate [the following] year. Applicants for Category D, E, F, G, I, J, or K [E or I] management-level certification shall attend the course or courses specified for the category. Category E applicants shall attend the 80-hour class; Category F, G, and I applicants shall attend the 16-hour class; and all other applicants shall attend an eight-hour class.

(1) The following management- or employee-level applicants shall complete the training requirements:

(A) Category D management-level;

(B) [(A)] Category E management-level;

(C) Category F management-level;

(D) Category G management-level;

(E) [(B)] Category I management-level;

(F) Category J management-level;

(G) Category K management-level;

(H) [(C)] Delivery truck employee-level;

(I) [(D)] DOT portable cylinder filler employee-level;

(J) [(E)] Service and Installation employee-level; [and]

(K) Appliance service and installation employee-level; and

(L) [(F)] Motor/mobile fuel dispensing employee-level.

(2) Training requirements for an applicant for license shall be fulfilled by all prospective company representatives and operations supervisors [for the license applicant].

(3) Individuals who pass an employee-level rules examination between March 1 and May 31 of any year shall have until May 31 of the next year to complete any required training [and AFT]. Individuals who pass an employee-level rules examination at other times shall have until the next May 31 to complete any required training [and AFT]. Completion of AFT shall be in accordance with subsection (f) of this section.

(4) Applicants for company representative or operations supervisor who do not comply with the conditional qualification in §9.17(g) [§9.17(e)] of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors) shall comply with the training requirements in this section prior to the Commission issuing a certificate.

(b) Continuing education. A certificate holder shall complete at least eight hours of continuing education every four years. Upon fulfillment of this requirement, the certificate holder's next continuing education deadline shall be four years after the May 31 following the date of the most recent class the certificate holder has completed, unless the class was completed on May 31, in which case the deadline shall be four years from that date. A certificate holder's continuing education deadline shall not be extended if an examination for a current category and level of certification is retaken and passed; a continuing education deadline shall be extended only after a certificate holder successfully completes an applicable continuing education class. An individual who completes a continuing education class after the assigned deadline shall have four years from the original deadline to complete the next class. [~~Attendance at more than eight hours of continuing education prior to a deadline shall not count toward the fulfillment of this requirement for any subsequent four-year period and shall not extend the deadline.~~]

(1) [~~As soon as practicable after the effective date of this rule, the Commission shall randomly assign each certified individual a continuing education deadline date. One-fourth of the certified individuals shall be assigned a deadline date of May 31, 2002, and equal numbers of the remaining certified individuals shall be assigned deadline dates of May 31, 2003, May 31, 2004, and May 31, 2005.~~] Individuals completing [~~who complete~~] their continuing education requirements [~~by the year randomly assigned~~] shall then have [~~an additional~~] four years to complete the next eight-hour continuing education requirement (unless a new certification is added that requires training as specified in subparagraph (B) of this paragraph).

(A) Certificate holders with one of the following certificates shall complete the continuing education classroom instruction and any required AFT for that class [~~course~~]:

(i) Category D management-level;

(ii) [~~(i)~~] Category E management-level;

(iii) Category F management-level;

(iv) Category G management-level;

(v) [~~(ii)~~] Category I management-level;

(vi) Category J management-level;

(vii) Category K management-level;

(viii) [~~(iii)~~] Delivery truck employee-level;

(ix) [~~(iv)~~] DOT portable cylinder filler employee-level;

(x) [~~(v)~~] Service and Installation employee-level; [~~and~~]

(xi) Appliance service and installation employee-level; and

(xii) [~~(vi)~~] Motor/mobile fuel dispensing employee-level.

(B) Certificate holders who hold only a Category D, F, G, J, or K certificate as of the effective date of this section shall complete their initial continuing education requirement by May 31, 2005. Certificate holders who hold a Category D, F, G, J, or K certificate and who have more than one certification as of the effective date of this section shall complete their continuing education requirement by the continuing education deadline assigned for the initial certificate.

(C) [~~(B)~~] Certificate holders who are certified to perform LP-gas activities covered by different certifications shall complete the continuing education requirements for any one of the certifications held in order to maintain active status. For each subsequent continuing education requirement, such individuals shall be responsible for attending [~~attend~~] a different continuing education class [~~course~~] relevant to one of the other certifications held.

(2) Certificate holders who attend a class [~~course~~] offered by an outside instructor shall not be entitled to a refund of the annual renewal fee or any other fees or penalties required by the Commission.

(3) Individuals who have not paid the annual certificate renewal fee, including general installers and repairman exemption holders or members of the general public, shall not attend training or continuing education classes [~~courses~~] free of charge, but may request from the AFRED training section to attend classes [~~courses~~] at the charge specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education). Such requests shall be in writing and handled at AFRED's discretion on an individual basis and if space is available in the requested class [~~course~~]. Any employee of a state agency, county, municipality, school district, or other governmental subdivision is not required to pay the fee.

(4) Any certificate holder who has timely paid the annual certificate renewal fee but is not otherwise required to attend a Commission continuing education class [~~continuing education course~~] may voluntarily attend a class [~~continuing education course~~], if space is available, by registering with the AFRED training section as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(c) Train-the-Trainer classes. The Train-the-Trainer classes shall not count as credit towards the training or continuing education requirements.

(d) [~~(c)~~] Class [~~course~~] materials. Individuals who attend Commission-taught classes [~~courses~~] shall receive a copy of the class [~~course~~] materials at no charge. Additional copies may be purchased from the Commission at the established price [~~a reasonable charge~~].

(e) [~~(d)~~] Certificates of completion. The AFRED training section shall issue a certificate of completion to each individual who completes a Commission-taught class [~~course~~]. Individuals shall retain the certificates as proof of completion of the class [~~course~~].

(f) [~~(e)~~] Advanced field training (AFT). Some classes [~~courses~~] may include AFT in addition to the [~~course~~] classroom hours, during which class [~~course~~] attendees shall perform LP-gas activities. AFT shall be properly completed within 30 calendar days of attending the class. All qualification tasks included in the AFT shall be completed. The AFT materials, including the qualification checklist and the certification page, shall be readily available at the licensee's Texas business location for review by an authorized Commission representative during normal business hours. [~~and the individual responsible for certifying the AFT shall return the AFT certification within a reasonable time following the completion of the classroom hours and prior to the individual's certificate renewal date in accordance with subsection (a)(3) of this section.~~]

(1) The responsibility of certifying AFT activities shall not be delegated to an unauthorized individual. AFT qualification tasks shall be witnessed by an authorized individual, verified [~~certified~~] as being successfully completed, and the AFT form signed as follows:

(A) For licensees with only one company representative, that company representative shall self-certify the AFT.

(B) For licensees with more than one company representative, one company representative may certify the AFT of another company representative, but shall not self-certify.

(C) Company representatives shall certify operations supervisors' AFT.

(D) The company representative or an operations supervisor authorized by the licensee and in current good standing with the Commission shall certify the employees' AFT.

(E) If authorized, a [~~A~~] Commission-approved outside instructor may certify any AFT.

(2) Other AFT situations shall be handled as follows:

(A) For a certified individual employed by a licensee, the licensee shall retain the most recently completed AFT material for each applicable category of the individual's certification in the individual's employment records.

(B) For an individual who ceases employment with a licensee, the licensee shall retain the latest required AFT material for at least two years from the date the individual is no longer employed by the licensee. The two-year period shall be based on the renewal period for the examination renewal fee penalty. The licensee shall provide a copy of the AFT material to the individual.

(C) For an individual who begins employment with a different licensee, the new licensee shall obtain a copy of the individual's AFT material from the individual and shall place the copy in the individual's employment records.

(D) An individual who is never employed by a licensee shall retain the most recently completed AFT material for each applicable category of the individual's certification in a safe location for at least two years from the date the class that required the AFT was attended.

(E) For an individual who is employed by a licensee when a class requiring AFT is attended, but who prior to the AFT's being certified becomes employed by a new licensee, the new licensee shall certify the individual's AFT.

(F) For an individual who is employed by a licensee when a class requiring AFT is attended, but who prior to the AFT's being certified ceases employment with the licensee and wishes to continue performing LP-gas activities, the individual shall contact a company representative or operations supervisor of another applicable licensee or an approved Commission outside instructor to complete the AFT and maintain the LP-gas certification.

(3) [~~(2)~~] Individuals who attend the 80-hour Category E [~~80-hour~~] management-level class [~~course~~] or the 16-hour Category F, G, or I [~~16-hour~~] management-level class [~~course~~] shall perform any required AFT activities during the class [~~course~~]. [~~The Commission instructor shall certify the AFT.~~]

(4) [~~(3)~~] If AFT is required for a class [~~course~~], the AFT checklist outlining the specific activities to be performed shall be included in the class [~~course~~] materials.

[~~(f) Computer-based continuing education courses.~~]

[~~(1) To receive credit for a computer-based continuing education course as shown in Table 1 of this section, the individual shall have successfully completed all sections and exercises of the course.~~]

[~~(2) The company representative or operations supervisor shall comply with AFRED's written computer-based course agreement.~~]

[~~(3) The individual shall ensure that all hardware and software shall be returned to the AFRED training section within the time period established by the AFRED training section. AFRED shall inspect the computer upon its return. If AFRED determines that changes or modifications have been made (including, for example, files or information downloaded from the Internet), the individual shall not receive credit for the computer-based course and the Commission shall not issue a certificate. If the computer requires any work to return the computer to its original condition, the individual shall reimburse the Commission for the repair costs.~~]

(g) Available courses. Training and continuing education courses and other information are shown in Tables 1 through 4 [~~Table 1~~] of this subsection. Items on the tables [~~table~~] marked with an "x" indicate courses that meet training or continuing education requirements for management-level or employee-level certificate holders in that category.
Figure: 16 TAC §9.52(g)

§9.53. Continuing Education Credit for Previous Courses.

An individual who is a current and valid certificate holder as of March 1, 2001, may receive credit toward the first continuing education requirement to be completed by the due date [~~randomly~~] assigned by the Commission as described in §9.52(b) of this title (relating to Training and Continuing Education Courses) if the individual completed one or more of the following:

(1) Commission classroom classes [~~courses~~]. An individual who attended a Commission class [~~course~~] on or after September 1, 1997, shall receive credit as shown in the tables [~~table~~] in §9.52(g) of this title (relating to Training and Continuing Education Courses) for a class [~~course~~] if it is directly related to the LP-gas activities authorized by that individual's certificate.

(2) Commission computer-based courses. An individual who completed a Commission computer-based course between [~~on or after~~] September 1, 1997, and September 1, 2003, shall receive credit as shown in the tables [~~table~~] in §9.52(g) for up to two courses, for a total of eight hours, if the courses were applicable to the individual's LP-gas activities. An individual who has received credit for a computer-based course shall attend a classroom-based course the next time that individual is required to attend a continuing education course.

(3) CETP classes [~~courses~~]. An individual who has attended a CETP class [~~course~~] on or after September 1, 1997, shall receive credit as shown in the tables [~~table~~] in §9.52(g) if the class [~~course~~] applies directly to the LP-gas activities authorized by the individual's certificate. Individuals wishing to receive credit for a CETP class [~~course~~] shall submit to the AFRED training section, in writing, the individual's name, address, phone number, [~~valid~~] Social Security number, current LP-gas certification, CETP class [~~course~~] date, and a copy of the CETP certificate for an equivalent CETP class [~~course~~] as follows:

(A) Basic Principles and Practices;

(B) Propane Delivery;

(C) Plant Operations;

(D) Distribution Systems Operations;

(E) Transfer Systems Operations;

(F) Appliance Installation;

(G) Appliance Service; or

(H) Large Industrial/Commercial.

§9.54. Commission-Approved Outside Instructors.

(a) General.

(1) The Commission may approve and award training or continuing education credit for the management-level and employee-

level applicants and certificate holders specified in this section [~~or new employees' training credit for courses~~] offered by an outside instructor provided the outside instructor complies with the requirements of this section.

(A) Authorized Category D outside instructors may offer only the applicable training and continuing education classes to Category D or K management-level applicants or certificate holders and to service and installation and appliance service and installation employee-level applicants or certificate holders.

(B) Authorized Category E outside instructors may offer only the applicable training and continuing education classes to Category D or K management-level applicants and to portable cylinder filling, motor/mobile fuel dispenser, delivery truck, service and installation, and appliance service and installation applicants and employee-level certificate holders.

(2) LP-gas companies may offer courses to their own personnel and to other companies' personnel provided that the LP-gas company and the outside instructor comply with the requirements of this section.

(3) All curriculum and course materials submitted for Commission review by an outside instructor applicant shall be printed or typewritten, organized, and easily readable, and shall remain confidential within the limits of Tex. Gov't Code, Chapter 552 (Public Information Act).

(4) Copies of the Commission's curricula and materials are available from the Commission at a reasonable cost.

(b) Application process. Outside instructor applicants shall submit the following to the Commission:

(1) a non-refundable $300 registration fee for each outside instructor;

(2) a copy of the applicant's Category D or E current certification card or, in the case of Category D only, a copy of the master or journeyman plumber/class A or B exemption card issued by the LP-Gas Safety Section;

(3) for each course the outside instructor applicant intends to teach:

(A) the curriculum for and a description of the course;

(B) the course materials and related supporting information or a statement that the instructor will use the Commission's course materials;

(C) a statement specifying whether the outside instructor seeks approval to certify any AFT described in §9.52 of this title (relating to training and continuing education courses);

(4) proof that the outside instructor applicant has experience, during at least three of the four years prior to the date of filing the application, in both:

(A) conducting LP-gas training or continuing education courses and

(B) performing or supervising LP-gas activities; and

(5) any other information required by this section.

(c) Curriculum standards. The curriculum for each course that an outside instructor applicant intends to teach shall include, where applicable, information that is at least the equivalent of the Commission's course or courses on the same topic or topics, and shall include all applicable current LP-gas regulations for Texas. Courses not offered by the Commission may be approved if the courses are equal or greater in overall quality to other approved courses.

(d) Commission review. The Commission shall review the application for approval as an outside instructor and, within 14 business days of the filing of the application, shall notify the applicant in writing that the application is approved, denied, or incomplete. If an application is incomplete, the Commission's notice of deficiency shall identify the necessary additional information, including any deficiencies in course materials. The outside instructor applicant shall file the necessary additional information within 30 calendar days of the date of the Commission's notice of deficiency. The outside instructor applicant's failure to file the necessary additional information within the prescribed time period may result in the dismissal of the outside instructor's application and the necessity of the outside instructor applicant again paying the non-refundable $300 registration fee for each subsequent filing of an application.

(e) Additional requirements for approval. Outside instructor applicants whose applications are approved in writing by the Commission shall attend the Commission's Train-the-Trainer Course, the fee for which is included in the $300 registration fee. The Train-the-Trainer Course shall include classroom instruction and the subject-matter examinations for each course for which the applicant seeks approval to conduct. An outside instructor applicant shall pass the subject-matter examination for each course with a score of at least 85 percent and shall attend the subject-matter courses for which the applicant seeks approval to conduct.

(f) Notification of approval. Within 10 business days of the outside instructor applicant's completion of the requirements of this section, the Commission shall notify the applicant in writing that the applicant is approved as an outside instructor and the outside instructor may then begin offering the courses for which the Commission approved the outside instructor.

(g) Term of approval. Commission approval of an outside instructor remains valid for three years unless the Commission revokes the approval pursuant to subsection (l) of this section.

(h) Renewal of approval. To continue offering Commission-approved LP-gas classes [~~courses~~], an outside instructor shall renew his or her Commission approval every three years by paying a $150 renewal fee to the Commission and attending a Train-the-Trainer refresher class prior to the outside instructor's next renewal deadline. [~~An outside instructor who is renewing his or her approval shall not be required to attend the Train-the-Trainer Course again, provided that the outside instructor has conducted at least one Commission-approved LP-gas course within the 12 months immediately prior to the month in which a renewal would become effective.~~]

(i) Revision of course materials. An outside instructor who [~~substantively~~] revises any course materials previously approved by the Commission shall submit the revisions in writing, along with a $100 review fee to the Commission, and shall not use the materials in a course until the outside instructor has received written Commission approval. The Commission shall review the revised course materials and, within 14 business days, shall notify the outside instructor in writing that the revised course materials are approved or not approved. If the revised course materials are not approved, the Commission's notice shall identify the portion or portions that are not approved and/or shall describe any deficiencies in the revised course materials. The outside instructor shall file any necessary additional information within 30 calendar days of the date of the Commission's notice of disapproval. The outside instructor's failure to file the necessary additional information within the prescribed time period may result in the dismissal of the outside instructor's request for approval of revised course materials and the necessity

of again paying the $100 review fee for each subsequent filing of revised course materials.

(j) Continuing requirements. Outside instructors shall:

(1) maintain their Category D or E certificate or Category D exemption card in continuous good standing. The Train-the-Trainer class shall not count as credit towards any training or continuing education requirements. Any interruption of the required Category D or E certification or Category D exemption card may result in the Commission revoking the outside instructor's approval;

(2) adhere to professional standards of conduct in class [~~course~~] presentations; and

(3) report to the Commission within three business days of the conclusion of a class [~~course~~] the names, social security numbers, and any other information required by the Commission, of the persons completing the class [~~course~~]. The report shall be made by electronic mail (e-mail) in an electronic format provided by the Commission. The outside instructor shall ensure that the Commission receives the report by securing written acknowledgment of its receipt by the Commission. This acknowledgement may be by return electronic mail (e-mail) or by facsimile transmission (fax).

(k) Disclaimer. Outside instructors are responsible for every aspect of the classes [~~courses~~] they teach, including the location, schedule, date, time, duration, price, content, material, demeanor and conduct of the outside instructor, and reporting of attendance information. The Commission shall not monitor or supervise the actual class [~~course~~] presentations by outside instructors. The Commission is not obligated to gather, maintain, or distribute information about outside instructors' course offerings, other than the names, telephone numbers, and addresses of approved outside instructors and the date on which an outside instructor's approval would expire, absent renewal. The Commission may refuse to issue or renew a certificate for an individual who presents for Commission credit an unapproved class [~~course~~]; a class [~~course~~] taught by an unapproved outside instructor; or a class [~~course~~] taught using unapproved, incomplete, or incorrect materials.

(l) Complaints.

(1) Complaints regarding outside instructors shall be made to the Commission in writing by electronic mail (e-mail), facsimile transmission (fax), or U. S. Postal Service; shall include the printed name, address, telephone number, and, if filed by fax or U.S. Postal Service, the signature of the person complaining; shall state the outside instructor's name, the date, location, and title of the course; and shall set forth the facts that the complainant alleges demonstrate that the outside instructor:

(A) failed to meet or maintain Commission requirements for outside instructor approval;

(B) failed to deliver a course as approved, including failure to follow the approved curriculum, to use the approved course materials, or to deliver the requisite numbers of hours of instruction; or

(C) engaged in other conduct, including the use of language, that created an atmosphere not conducive to learning. Such conduct includes but is not limited to demeaning, derogating, or stereotyping women or men, disabled persons, members of any political, religious, racial, or ethnic group, or a particular individual, organization, or product.

(2) Upon receipt of a complaint and at its discretion, the Commission may gather any additional information necessary or appropriate to making a full and complete analysis of the complaint. The Commission shall deliver a written copy of the analysis and any findings by certified mail to the outside instructor who is the subject of the complaint. The outside instructor may file a written response within 20 calendar days from the date the findings are postmarked.

(3) If the Commission determines that an outside instructor has engaged in conduct prohibited by this section, the Commission may prepare a report that states the facts on which the determination is based and the recommendation as to the action the Commission intends to take. The Commission may issue a written warning to the outside instructor; decline to approve or renew the outside instructor's approval; or revoke the outside instructor's approval.

(4) The Commission shall mail a copy of the report and recommendation to the outside instructor by certified mail and shall include a statement that the outside instructor has a right to a hearing on the determination contained in the report.

(5) Within 20 calendar days after the date the notice is postmarked, the outside instructor shall file a written response either accepting the determination and recommended action or requesting a hearing on the determination.

(6) If the outside instructor accepts the determination, he or she shall notify the Commission in writing of the acceptance, and the Commission shall take the action indicated in the report.

(7) If an outside instructor requests a hearing or fails to respond timely to the notice given under paragraph (5) of this subsection, the director shall refer the matter to the Office of General Counsel for the setting of a hearing. The Office of General Counsel shall assign an examiner to conduct a hearing, which shall be conducted under the Commission's General Rules of Practice and Procedure, Chapter 1 of this title (relating to Practice and Procedure).

(8) Following the hearing, the Commission may enter an order finding that the outside instructor has violated Commission rules or that no violation has occurred; and may make any other finding based on the evidence in the record.

(9) If the outside instructor does not comply with the order of the Commission, and if the enforcement of the Commission's order is not stayed, then the Office of General Counsel may refer the matter to the attorney general for enforcement of the Commission's order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
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CHAPTER 9. LP-GAS SAFETY RULES

The Railroad Commission of Texas proposes amendments to §§9.101, 9.114, 9.131, 9.135-9.137, 9.140-9.143, 9.206, 9.301, 9.307, 9.311, 9.312, and 9.401-9.403 of this title relating to Filings Required for Stationary LP-Gas Installations; Odorizing and Reports; 200 PSIG Working Pressure Stationary Vessels; Unsafe or Unapproved Containers, Cylinders, or Piping; Filling of DOT Containers; Inspection of Cylinders at Each Filling; Uniform Protection Standards; Uniform Safety Requirements; LP-Gas

Container Storage and Installation Requirements; Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More; Vehicle Identification Labels; Adoption by Reference of NFPA 54; Identification of Converted Appliances; Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support; Certification Requirements for Joining Methods; Adoption by Reference of NFPA 58; Clarification of Certain Terms Used in NFPA 58; and Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections. The Commission proposes these amendments in order to adopt by reference the 2001 edition of National Fire Protection Association (NFPA) *Liquefied Petroleum Gas Code*, commonly referred to as NFPA 58, in place of the 1998 edition adopted by reference effective February 1, 2001, and to make other substantive and non-substantive amendments.

Texas Natural Resources Code, §113.011, provides that the Commission shall administer and enforce the laws of Texas and the rules and standards of the Commission relating to liquefied petroleum gas (LP-gas). Texas Natural Resources Code, §113.051, provides that the Commission shall promulgate and adopt rules or standards or both relating to any and all aspects or phases of the liquefied petroleum gas industry that will protect or tend to protect the health, welfare, and safety of the general public. Texas Natural Resources Code, §113.052, provides that the Commission may adopt by reference, in whole or in part, the published codes of the National Fire Protection Association to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Recently, it has become more difficult for LP-gas businesses doing business in Texas to conduct business regionally and/or nationally due to differences in state rules and regulations. Differing state requirements increase costs associated with operating an LP-gas business with operations in Texas and one or more additional states. Current national standards, which have been adopted by the Commission, impose safety standards and specifications on LP-gas businesses that insure a high degree of safety to the public health, safety, and welfare. Therefore, the Commission finds that it is in the public interest to adopt by reference national safety standards in order to increase public safety and remove regulatory burdens that increase the cost of operating an LP-gas business. In 2001, the Commission adopted the 1998 edition of NFPA 58. The Commission either adopted alternative or additional language for or did not adopt certain sections of the 1998 edition of NFPA 58, which are indicated in the table in §9.403(a). Because the 2001 edition of NFPA 58 has been adopted in whole or in part by most other states in the United States, the Texas LP-gas industry would benefit from adopting the update to the 2001 edition of NFPA 58, because Texas companies would be held to the same standards when doing business in other states; therefore, LP-gas companies wishing to expand their businesses to other states would have find it easier to do so.

As a result of adopting the 2001 edition of NFPA 58, the Commission proposes some amendments to Commission rules in order that the rules remain consistent with the 2001 edition of NFPA 58. Also, as the Commission did when adopting the 1998 edition, there are some sections in the 2001 edition of NFPA 58 for which the Commission proposes to adopt alternative or additional language, or language which the Commission does not adopt; these sections are indicated in the table in §9.403(a). The table also shows sections in NFPA 58 which were published with typographical or other errors that were corrected by NFPA in errata documents published at a later date.

The Commission included Chapter 9 in the adoption of the 1998 edition of NFPA 58 and will likewise adopt Chapter 9 in the update to the 2001 edition, even though at this time there are no installations in Texas covered by this chapter.

As with the adoption of the 1998 edition of NFPA 58, the Commission does not adopt Chapter 10 regarding marine shipping and receiving, because the Commission's §9.1 states that the LP-gas safety rules do not apply to these types of installations or activities.

Also, the Commission does not adopt language in NFPA 58 and other related pamphlets referring to the practice of engineering (such as "sound engineering practices" or "good engineering practices," for example) and has attempted to maintain this distinction in the update to the 2001 edition of NFPA 58.

Proposed Non-substantive Amendments

NFPA changed its numbering scheme between the 1998 and the 2001 editions of NFPA 58 from a number using a dash and periods to a number using all periods. For example, in §9.101(c)(2), the reference to NFPA 58 §3-2.2.3 is now §3.2.2.3. There are many instances throughout these rules where this non-substantive change has been proposed. In particular, the Commission rules which have amendments proposed solely to change the NFPA section numbers include §9.101, 9.114, 9.131, 9.135, 9.136, 9.137, 9.140, 9.141, 9.142, 9.206, 9.307, 9.311, and 9.312.

Clarifying and Substantive Amendments

The Commission proposes both substantive and non-substantive amendments to §9.143. The proposed amendments in §9.143(a) reflect the rule numbering scheme of the 2001 edition of NFPA 58, correct some NFPA 58 section numbers, and add new language to exempt the filling of a container solely through a 1-3/4 inch double back check filler valve, directly installed in the container, from the requirements of §9.143; the wording for this exemption is also proposed in subsection (b). The reason for this exemption is that no bulkhead and ESV protection is required if containers are filled through a standard filler valve with double back check capabilities. These valves are designed to shear at an engineered point without loss of product in the event of a pull-away accident. The Commission finds that requiring bulkheads and ESVs on these small filler valves would be overly burdensome.

Proposed amendments to §9.143(d)(7)(E)(iii) and (e) are non-substantive and reflect the rule numbering scheme of the 2001 edition of NFPA 58. The proposed amendment to subsection (g) changes the requirements for stainless steel flexible connectors from 24 inches in length or less to 36 inches in length or less. The 2001 edition of NFPA 58, §1.7.26, defines the term "flexible connector" as not exceeding 36 inches, and §3.2.17 mandates that flexible connectors and hose used as flexible connectors shall not exceed 36 inches in length. The proposed amendment to increase the maximum length to 36 inches is made in order to make Commission rules consistent with the 2001 edition of NFPA 58. The change in this requirement will not decrease safety and, in certain circumstances, may increase safety. Limiting a flexible

connector's length to 24 inches may, in effect, make that connector rigid due to the physical limitations of the space in which it is installed. In circumstances where the connector needs a minimum amount of flexibility and the 24- inch maximum length reduces needed flexibility, safety may be compromised. For this reason, the Commission proposes this amendment to be consistent with the requirements of the 2001 edition of NFPA 58.

Proposed new §9.401(a) adopts by reference the 2001 edition of NFPA 58, effective September 1, 2003, in order to update the 1998 edition currently adopted by the Commission. Proposed amendments to §9.401(b) are non-substantive and reflect the rule numbering scheme of the 2001 edition and update the edition dates of other NFPA standards and codes cited by the 2001 edition of NFPA 58.

Proposed amendments in §9.402(a) are non-substantive, reflect the numbering scheme of the 2001 edition, and delete the term "engineering" which is no longer defined in the 2001 edition. The Commission, however, retains the language in subsection (b) which clarifies the Commission's policy on the practice of engineering.

Proposed amendments in §9.403(a) include a non-substantive amendment to reflect NFPA's publication of a November 19, 2001, errata sheet. The errata sheet, prepared by NFPA, shows corrections such as typographical and other errors that were printed in the 2001 edition of NFPA 58. These errors are shown with their corrected wording on the applicable rows in the Table. In addition, the Commission proposes a new Table 1 in §9.403 to replace the previous table showing the NFPA 58 sections not adopted, adopted with changes, or in addition to existing Commission rules.

In new table §9.403(a), the Commission specifies which provisions of the 2001 edition of NFPA 58 it is adopting with changes, additional requirements, not adopting, and which have errata published by NFPA and corresponding corrections.

NFPA 58 Sections Adopted with Additional Requirements

The rows in the table in §9.403 which indicate "additional requirements" refer to other Commission rules that accompany the NFPA 58 section. There are three types of proposed changes within this category. The first group includes changes solely in the numbering scheme for the NFPA 58 section; for example, former NFPA 58 §1-3 is now §1.3. These sections, which have no proposed changes other than the NFPA 58 section numbering scheme, are §§1.3, 2.2.1.4, 2.2.2.2, 2.2.6.1, 2.3.2.3, 2.4.4, 2.4.4.3, 2.4.6, 3.2.2.2, 3.2.2.3, 3.4.2.4, 3.9.3.8, 4.2.3.8, 4.4.3.1, 5.2.1.1, 5.4.2.1, and Appendix A.

The second group includes NFPA 58 sections which were reorganized as well as renumbered; for example, §1-6 in the 1998 edition of NFPA 58 is now §1.7.11 in the 2001 edition. No other changes are proposed. These sections include §1.7.11 (formerly §1-6), §3.2.2.8 (formerly §3-2.2.9), §3.2.4.2 (formerly §3-2.4.1(c), §3.2.4.4 (formerly §3-2.4.1(f), §3.2.9.1 (formerly §3-2.4.8(a); and §3.2.9.2(d) (formerly §3-2.4.9(d).

The third group includes the renumbering and some reorganization of the NFPA 58 sections, but also includes some other proposed changes.

In §1.5, the Commission proposes the same changes as in the 1998 edition, with the additional clarification of the specific Commission rules that are applicable, whereas the exception adopted for the 1998 edition of the provision pointed out the applicable rule chapter and subchapter.

The Commission proposes an additional requirement for §2.6.2.1 in the 2001 edition, whereas in the 1998 edition the Commission adopted §2-6.2.1 with changes. The Commission is not adopting the prior change to §2.6.2.1 which required that an appliance be used according to the manufacturer's instructions. The prior exception is not needed because the Commission's rule 9.307 applies and it is not necessary to state that requirement as an exception to the NFPA provision. The Commission does not have control over the content of appliance instructions written by the manufacturer; such a requirement can, in effect, promulgate nonuniform and differing requirements for the same type of appliance made by different manufacturers; and NFPA 54, which the Commission has adopted, contains provisions addressing LP-gas appliances.

The Commission proposes an exception to §3.2.17 as an additional requirement instead of changing the provision as was done for §3-2.10.10 of the 1998 edition. The exception to the 1998 edition version required operators to comply with §9.143, which they would have to do despite the exception to this particular NFPA provision. Therefore, the Commission proposes to show §9.143 as an additional requirement rather than amending the text of the NFPA provision.

The Commission proposes the same type of change for §3.9.3.10 and §3.11.4.3(c). The exception to §3-9.3.10 in the 1998 edition added language telling operators to see Commission rule §9.140. Operators are already required to comply with §9.140; therefore, the Commission proposes to show §9.140 as an additional requirement rather than amending the text of the NFPA provision.

The same change is proposed for §3-11.4.3(c)(3).

Sections in NFPA 58 Not Adopted

There are three groups of NFPA 58 sections which the Commission does not adopt. The first group includes sections in the 1998 edition which were not adopted and are not proposed to be adopted now; the only change is the numbering scheme. These sections are §§1.4.1, 1.4.2, 2.2.6.3, 2.2.6.5, 3.2.3.1(c), 3.4.8.3, 3.11.5, 4.2.1.2, 5.3.1, 5.4.2.2, and Chapter 10.

The second group includes NFPA 58 sections which were reorganized as well as renumbered; for example, §1-6 is the 1998 edition is now §1.7.40 in the 2001 edition. The sections which have these types of changes are §1.7.40 (formerly §1-6), §§3.2.19.1, 3.2.19.2, 3.2.19.3, and 3.2.19.6 (which were formerly all part of §3-2.10.11), and §8.1.3 (formerly §8.1.4).

The third group includes the renumbering and some reorganization of the NFPA 58 sections, but also includes some other proposed changes.

The requirements of §2-3.3.2 in the 1998 edition are substantively the same as the requirements of §2.3.3.2 in the 2001 edition. However, the text of §2.3.3.2 in the 2001 edition has been rewritten and is structurally different from §2-3.3.2 of the 1998 edition. As a result, the Commission has adopted with changes §2.3.3.2(a)-(b)(2), which in effect is no change from the Commission's adoption with changes of §2-3.3.2 of the 1998 edition. By not adopting §2.3.3.2(b)(3)-(4) of the 2001 edition, the requirements of this provision are substantively the same as the Commission's adoption with changes of §2-3.3.2 in the 1998 edition.

The Commission is not adopting §3.3.3.6 of the 2001 edition because these requirements are covered by the exceptions to §2.3.3.2 of the 2001 edition. Section 3-3.3.7 in the 1998 edition was renumbered §3.3.3.6 in the 2001 edition. The requirements

of Texas' exceptions to §3-3.3.7 in the 1998 edition are found in §2.3.3.2 of the 2001 edition.

The Commission is not adopting §5.4.3 of the 2001 edition because the text of this provision mandates an exception under certain conditions. The Commission has existing rule provisions for granting exceptions to its rules.

Sections in NFPA 58 Adopted with Changes

There are four groups of NFPA 58 sections which the Commission adopts with changes. The first group is sections which are adopted with the same changes in the 2001 edition as in the 1998 edition; the only difference is the numbering scheme. These are §§2.2.6.4, 3.2.2.1, 3.4.9.2, 3.4.2.1, 3.4.2.7, 6.3.6, 8.2.8.1, and 8.2.10.

The second group includes NFPA 58 sections which were reorganized as well as renumbered. These sections are §3.2.5 (formerly §3-2.4.1(a), §§3.2.18.1, 3.2.18.2, and 3.2.18.3 (formerly all part of §3-2.11), §3.8.2.8(e) (formerly §3- 8.2.7(d), and §3.4.4.1 (formerly §3-4.4).

The third group includes NFPA 58 sections which were proposed with changes to the 1998 edition to address forthcoming changes in the 2001 edition. Now that these changes are part of the 2001 edition, the exceptions are no longer needed. These sections include §2-3.7(a), §3-2.2.7, §3-2.4.2(c), §3-2.4.3(a), §3-2.4.7(d), §3.2.9.3(d), §3.2.16.14 (formerly §3- 2.10.8(j), §§3.2.15.9 and 3.2.15.10 (formerly §3-2.10.9), §§3.2.11 through 3.2.15, §3.2.25.1(a) (formerly §3- 2.16.1.(a), §3.4.4.2 (formerly §3-4.4.(b), §3.4.5.1, §3.10.2.2 (formerly §3-10.2.3), §4.2.2.3, §5.4.1, and §8.2.3 (formerly §8-2.3.1).

The fourth group includes NFPA 58 sections which were adopted with changes to the 1998 edition and which are proposed to be adopted with some different changes to the 2001 edition.

The Commission proposes to adopt §2.2.1.5 of the 2001 edition as written, thus removing the exception made to §2- 2.1.5 in the 1998 edition. The Commission has determined that it will increase public safety to require requalification of cylinders which may be installed adjacent to buildings without a distance separation.

The Commission proposes to retain the same changes to §2.3.1.5 as were made to §2-3.1.5 in the 1998 edition in regards to the size requirements of cylinders. The Commission does not propose any changes with regard to the dates that were made in the 1998 edition of §2-3.1.5 because those dates have passed.

The Commission proposes a change to §2.3.3.2(a)(5) in order to make the provision consistent with the size of cylinder over which the Commission has jurisdiction under Texas Natural Resources Code, Chapter 113.

The Commission proposes a change to §3.2.12.1 similar to that made to §3-2.7.1 in the 1998 edition. In the 2001 edition of this provision, the Commission is changing the date on which single-stage regulators shall not be installed in fixed piping systems to February 1, 2001, which is consistent with the effective date of the adoption of the 1998 edition of NFPA 58.

The Commission proposes a change to §3.2.24 in the 2001 edition in order to remove a reference to engineering practice. This change is consistent with the exception to the 1998 edition, §3-2.15.

The Commission proposes a change to §3.7.2.2 by removing "commercial" from the exception for fixed electrical equipment at installations of LP-gas systems. The justification for this change is that the Texas definition of "commercial" includes industrial applications and differs from the NFPA definition of "commercial," which excludes industrial applications and is based on tank size rather than operational activity.

The Commission proposes changes to §§3.11.3, 3.11.3.1, and 3.11.3.3 in order to make these provisions consistent with the Commission's proposed adopted version of §2.3.3.2. The provisions of §§3.11.3, 3.11.3.1, and 3.11.3.3 are substantively the same as §3-11.3 of the 1998 edition and therefore is not a substantive change to §3-11.3 of the 1998 edition as adopted by the Commission with exceptions.

The Commission proposes changes to §4.4.3.2 in order to make this provision consistent with the requirements of Commission rule §9.136.

The exceptions to §§6-2.4 and 6-3.7 in the 1998 edition are not proposed to be retained in the 2001 edition because the language in the 2001 edition is consistent with all fire extinguisher requirements in NFPA 58 and the exceptions create a third standard in addition to Department of Transportation federal requirements.

The exception to §6-3.3.4 in the 1998 edition is not proposed to be retained in the 2001 edition because the implementation date in the Texas exception has passed and no exception is needed.

The Commission proposes changes to §6.5.2.1 in order to allow the exceptions as provided by the 2001 edition. The Commission did not adopt any of the exceptions in §6-5.2.1 in 1998 edition. However, the Commission has determined that it is less dangerous to public safety to transport a container with product for evacuation under controlled conditions than to attempt to evacuate a container within a residential or commercial environment.

The Commission proposes changes to §8.2.3(1) in order to allow the use of overfill prevention devices under certain limited circumstances. This is a change from the Commission's adopted exception to §8-2.3(k) of the 1998 edition which did not allow the sole use of overfill prevention devices.

The Commission proposes changes to §8.2.6.6 which are substantively the same as the changes made to §8-2.6.6 in the 1998 edition. The change to §8.2.6.6 in the 2001 edition will additionally allow original vehicle manufacturers to design and manufacture container mounting brackets.

The Commission does not propose a change to the definition of "bulk plant" in the 2001 edition as was done in §1-6 of the 1998 edition. The definition of "bulk plant" has been changed in the 2001 update to remove a gallon requirement. Therefore, the 2001 edition's definition of "bulk plant" is consistent with current Commission rules and no exception is needed.

The Commission's exceptions to §§2-2.3.2, 2-2.3.3, and 2- 2.3.6 of the 1998 edition removed certain dates. In the 2001 edition version of these rules, the Commission proposes to retain these dates because these dates refer to ASME design change dates, not rule implementation dates, and therefore no exceptions are needed.

The exception to §2-3.2.5 in the 1998 edition is not proposed to be retained in the 2001 edition because the February 1, 2002, date has passed and all cylinders up to February 1, 1988, have already been required to have had their relief valves replaced.

The Commission's exceptions to §§2-3.4.2, 2-3.4.2(a) and 2-3.4.2(c) of the 1998 edition removed certain dates. In the

2001 edition, the Commission proposes to retain these dates because they refer to ASME design change dates, not rule implementation dates, and therefore no exceptions are needed.

The exception to §3-2.4.8(h)(3) in the 1998 edition is not proposed to be retained in the 2001 edition, renumbered §3.2.9.1(f)(3), because the Texas Commission on Environmental Quality (formerly the Texas Natural Resource Conservation Commission) does not have rules addressing these items and therefore no exception is needed.

The exception to §8-2.3.1(l) in the 1998 edition is not being retained in the 2001 edition provision §8.2.3(j) because the design date has passed and no exception is needed.

The exception to §8-3.7 in the 1998 edition is not being retained in the 2001 edition provision §8.3.7 because the implementation date has passed and no exception is needed.

Richard Gilbert, LP-gas safety specialist, Gas Services Division, LP-Gas Safety, has determined that for each year of the first five years the proposed amendments to §§9.101, 9.114, 9.131, 9.135-9.137, 9.140-9.143, 9.206, 9.301, 9.307, 9.311, 9.312, and 9.401-9.403 are in effect there will be fiscal implications for state government as a result of enforcing or administering the amendments. The Commission will be required to purchase 20 copies of the 2001 edition of NFPA 58; these cost $36.75 per pamphlet, and will thus have a fiscal impact of at least $735, which the Commission will handle within existing budget authority. There will be no fiscal implications to the Commission with regard to the proposed amendments to §§9.101, 9.114, 9.131, 9.135-9.137, 9.140-9.143, 9.206, 9.301, 9.307, 9.311, 9.312, and 9.401-9.403. There are no fiscal implications for local governments.

Mr. Gilbert has also determined that the public benefit anticipated as a result of the amendments will be increased public health, safety and welfare, and decreased regulatory costs associated with compliance with the 1998 version of NFPA 58. The Commission finds that allowing the LP-gas industry to conduct business pursuant to national uniform safety standards achieves a reasonable balance between the public interest in having LP-gas, an environmentally-beneficial fuel, widely and continuously available and at lower costs, and the public interest in having LP-gas industry participants comply with comprehensive safety standards.

There will be some financial impact on LP-gas licensees required to comply with §9.7 of this title (relating to Application for License and License Renewal Requirements) which requires licensees to maintain a current version of the LP-Gas Safety Rules and to provide at least one copy to each company representative and operations supervisor. Because NFPA 58 is adopted by reference, it is part of the LP-Gas Safety Rules and licensees will be required to purchase a copy of the 2001 edition of NFPA 58; the cost currently is $36.75 per copy. A licensee is also required to purchase copies of the referenced NFPA 58 pamphlets if the licensee performs the activities covered by those pamphlets. The current cost, per book, of these publications is as follows:

NFPA 10 - $31.00;

NFPA 15 - $31.00;

NFPA 30 - $33.08;

NFPA 37 - $27.75;

NFPA 50B - $23.50;

NFPA 51 - $23.50;

NFPA 51B - $23.50;

NFPA 54 - $36.75;

NFPA 59 - $27.75;

NFPA 61 - $27.75;

NFPA 70 - $59.50;

NFPA 82 - $23.50;

NFPA 86 - $31.00;

NFPA 96 - $27.75;

NFPA 101 - $59.50;

NFPA 302 - $31.00;

NFPA 501A - $23.50;

NFPA 505 - $23.50; and

NFPA 1192 - $27.75.

A licensee purchasing one copy of all pamphlets would spend $592.58.

Pursuant to Texas Government Code, §2006.002(c), the Commission cannot determine the cost of compliance for individual, small business, or micro-business LP-gas businesses, because under the proposed amendments, operating an LP-gas business is voluntary, not mandatory. The Commission assumes that there are LP-gas businesses that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission does not have data showing the expense for each employee, the expense for each hour of labor, or the total sales revenue for any LP-gas business. In addition, the costs for any particular LP-gas business will vary based on that business' situation. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each $100 of sales pursuant to Texas Government Code, §2006.002(c). Further, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering that the purpose of Texas Natural Resources Code, Chapter 113, is to ensure the safe use of LP-gas, it is not feasible to reduce any adverse effect the proposed amendments could have on individuals, small businesses, or micro-businesses based on the size of the business.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. Due to these amendments being a routine update of existing rules, the Commission will accept comments for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket No. 1735. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Gilbert at (512) 463-6935. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

SUBCHAPTER B. STATIONARY INSTALLATIONS AND CONTAINER REQUIREMENTS

16 TAC §§9.101, 9.114, 9.131, 9.135 - 9.137, 9.140 - 9.143

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §§113.051 and 113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on June 10, 2003.

§9.101. Filings Required for Stationary LP-Gas Installations.

(a)-(b) (No change.)

(c) Aggregate water capacity of 10,000 gallons or more.

(1) (No change.)

(2) In addition to NFPA 58, §3.2.3.3 [~~§3-2.2.3~~], prior to the installation of any individual LP-gas container, the Commission shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare.

(A)-(B) (No change.)

(3)-(5) (No change.)

(d)-(g) (No change.)

§9.114. Odorizing and Reports.

(a) Odorization shall comply with NFPA 58, §1.3 [~~§1-3~~].

(b)-(d) (No change.)

§9.131. 200 PSIG Working Pressure Stationary Vessels.

In addition to NFPA 58, §2.2.2.2 [~~§2-2.2.2~~] and §2.3.2.3 [~~§2-3.2.3~~], 200 psig working pressure stationary vessels in LP-gas service in Texas prior to September 1, 1981, may be continued in service for commercial propane provided that they are fitted with pressure relief valves set for 250 psig normal start to discharge and comply with other provisions of this chapter. For the purpose of this section, "commercial propane" is defined as having a vapor pressure not in excess of 210 psig at 100 degrees Fahrenheit. This section does not apply to LP-gas motor fuel and mobile fuel containers.

§9.135. Unsafe or Unapproved Containers, Cylinders, or Piping.

In addition to NFPA 58, §2.2.1.4 [~~§2-2.1.4~~], a licensee or the licensee's employees shall not introduce LP-gas into any container or cylinder if the licensee or employee has knowledge or reason to believe that such container, cylinder, piping, or the system or the appliance to which it is attached is unsafe or is not installed in accordance with the statutes or the *LP-Gas Safety Rules*.

§9.136. Filling of DOT Containers.

(a) (No change.)

(b) Containers designed to be used on forklifts or industrial trucks shall be filled as specified in NFPA 58, §8.3 [~~§8-3~~].

§9.137. Inspection of Cylinders at Each Filling.

In addition to NFPA 58, §2.2.1.5 [~~§2-2.1.5~~], before filling a DOT cylinder, the individual filling the cylinder shall examine the cylinder. Where the cylinder is found to be dented or bulged, where the metal is gouged, or where there is evidence of corrosion which substantially reduces the integrity of the cylinder, such cylinder shall not be filled.

§9.140. Uniform Protection Standards.

(a) (No change.)

(b) In addition to NFPA 58, §§3.3.6.1, 3.4.2.4, 3.9.3.6, 4.2.3.8, 5.2.1.1, and 5.4.2.1 [~~§§3-3.6, 3-4.2.4, 3-9.3.6, 4-2.3.8, 5-2.1.1, and 5-4.2.1~~], fencing at LP-gas installations shall comply with the following:

(1)-(7) (No change.)

(c) (No change.)

(d) In addition to NFPA 58, §§3.2.4.2, 3.2.9.1(a)-(d), 3.2.9.2(d), 3.3.6.1, 3.9.3.8, 5.4.2.1 [~~§3-2.4.1(c), §3-2.4.8(a), (b), and (d), §3-2.4.9(d), §3-3.6, §3-9.3.8, and §5-4.2.1~~], guardrails at LP-gas installations, except as noted in subsection (a) of this section, shall comply with the following:

(1)-(6) (No change.)

(e)-(g) (No change.)

(h) In addition to NFPA 58, §5.4.2.2 [~~§5-4.2.2~~], storage racks used to store nominal 20-pound DOT portable or any size forklift containers shall be protected against vehicular damage by:

(1)-(5) (No change.)

§9.141. Uniform Safety Requirements.

(a) In addition to NFPA 58, §3.2.4.1(f) [~~§3-2.4.1(f)~~], containers shall be painted as follows:

(1)-(2) (No change.)

(b) In addition to NFPA 58, §3.9.4.2 [~~§3-9.4.2~~], each LP-gas private or public motor/mobile or forklift refueling installation which includes a liquid dispensing system shall incorporate into that dispensing system a breakaway device. Any vapor return hose installed at such installations shall also be equipped with a breakaway device. LP-gas installations at which forklift cylinders are completely removed from the forklift before being filled are not required to have a breakaway device.

(c)-(d) (No change.)

(e) In addition to NFPA 58, §2.2.6.1 [~~§2-2.6.1~~], all containers shall be numbered in accordance with the requirements set forth in Table 1 of §9.140 of this title (relating to Uniform Protection Standards).

(f) In addition to NFPA 58, §3.2.2.8 [~~§3-2.2.9~~], no canopies or coverings are allowed over any LP-gas container or over loading and unloading areas where LP-gas transport transfer operations are performed. Non-combustible wind breaks and other weather protection may be installed to provide employees and customers protection against the elements of weather, but shall not be installed over any portion of an LP-gas container.

(g)-(i) (No change.)

§9.142. LP-Gas Container Storage and Installation Requirements.

Except as noted in this section, LP-gas containers shall be stored or installed in accordance with the distance requirements in NFPA 58, §3.2.2 [~~§3-2.2~~] and the entries for §3.2.2.7 [~~§3-2.2.7~~] and §5.4.1 [~~§5-4.1~~] as indicated in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections) and any other applicable requirements in NFPA 58 or the *LP-Gas Safety Rules*.

(1) An LP-gas liquid dispensing installation other than a retail operated DOT portable container filling/service station installation is not required to have a pump, provided that the storage containers are located one and one half times the required distances specified in NFPA 58, §3.2.2 [~~§3-2.2~~], or a minimum distance of 15 feet if the storage container is less than 125 gallons water capacity.

(2) (No change.)

§9.143. Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

(a) Instead of NFPA 58, §3.2.10.11 [~~§3-2.10.11~~], effective February 1, 2001, new stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, shall install a vertical bulkhead and pneumatically-operated internal valves and pneumatically-operated emergency shutoff valves (ESVs), as required in this section and in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes, Additional Requirements, or Corrections) for NFPA 58, §§3.2.18.1, 3.3.3.6, and 3.11.3 [~~sections 3-2.11, 3-3.3.7, and 3-11.3~~]. The filling of a container solely through a 1 3/4 inch double back check filler valve, directly installed in the container, is exempt from the requirements of this section.

(b) Within two years of February 1, 2001, or by February 1, 2003, at the latest, stationary LP-gas installations in existence as of February 1, 2001, with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, or railroad tank car transfer systems to fill trucks with no stationary storage involved, which do not have a bulkhead and/or backflow check valves where the flow is in one direction into the container and ESVs installed shall install vertical bulkheads and pneumatic ESVs. The filling of a container solely through a 1 3/4 inch double back check filler valve, directly installed in the container, is exempt from the requirements of this section.

(1)-(5) (No change.)

(c) (No change.)

(d) Bulkheads, whether horizontal or vertical, shall comply with the following requirements:

(1)-(6) (No change.)

(7) Bulkheads shall be constructed by welding using the following materials or materials with equal or greater strength, as shown in the diagram.
Figure: 16 TAC §9.143(d)(7) (No change.)

(A)-(D) (No change.)

(E) Either a schedule 40 pipe sleeve or a 3,000-pound coupling shall be welded between the top crossmember and the kick plate;

(i)-(ii) (No change.)

(iii) Elbows or other fittings shall comply with NFPA 58, §2.4.4 [~~§2-4.4~~] and shall direct the transfer hose from vertical to prevent binding or kinking of the hose.

(8)-(9) (No change.)

(e) In addition to NFPA 58, §2.3.3.2 [~~§2-3.3.2~~] as amended in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections), ESVs and internal valves shall have emergency remote controls conspicuously marked according to the requirements of Table 1 of §9.140 of this title (relating to Uniform Protection Standards). Effective February 1, 2001, for all new facilities, where a bulkhead, internal valves, and ESVs are installed, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 20 and 100 feet from the ESV in the path of egress from the ESV. Existing installations shall comply by August 1, 2001. The use of swivel-type piping as specified in subsection (d)(8) of this section shall not eliminate the requirement for an ESV. Swivel- type piping may be installed between the bulkhead and the minimum 12-inch nipple, but shall not eliminate the requirement for an ESV. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(f) (No change.)

(g) By February 1, 2003, rubber flexible connectors which are 3/4-inch or larger in size installed in liquid or vapor piping at an existing liquid transfer operation shall be replaced with a stainless steel flexible connector. Stainless steel flexible connectors shall be 36 [~~24~~] inches in length or less, and shall comply with all applicable *LP-Gas Safety Rules*. Flexible connectors installed at a new installation after February 1, 2001, shall be stainless steel.

(h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2003.

TRD-200303479
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 475-1295

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SUBCHAPTER C. VEHICLES AND VEHICLE DISPENSERS

16 TAC §9.206

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §§113.051 and 113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on June 10, 2003.

§9.206. Vehicle Identification Labels.

(a) LP-gas shall not be introduced into any vehicle powered by LP-gas and designed for regular use on public roadways unless the vehicle is properly identified by a weather-resistant diamond-shaped label described in NFPA 58, §8.2.10 [~~§8-2.10~~], as that section is amended in Table 1 of §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes, Additional Requirements, or Corrections).

(b)-(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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SUBCHAPTER D. ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)

16 TAC §§9.301, 9.307, 9.311, 9.312

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §§113.051 and 113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on June 10, 2003.

§9.301. Adoption by Reference of NFPA 54.

(a) (No change.)

(b) The Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 54 which apply to LP-gas activities only. The adopted pamphlets referenced in NFPA 54 are:

(1)-(4) (No change.)

(5) NFPA 58, *Liquefied Petroleum Gas Code*, 2001 [~~1998~~] edition;

(6)-(14) (No change.)

§9.307. Identification of Converted Appliances.

(a) In addition to the requirements of NFPA 54, §5.1.3, and NFPA 58, §2.6.2.1 [~~§2-6.2.1~~], upon completion of the conversion and testing of LP-gas appliances, the licensee shall attach to each such appliance a decal or tag of metal or other permanent material indicating the following information:

(1)-(4) (No change.)

(b) (No change.)

§9.311. Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.

(a) In addition to the requirements of NFPA 54, §5.5.2 regarding gas hose connectors, agricultural structures, such as greenhouses or broiler houses, or industrial structures not inhabited by humans may have appliance connectors more than six feet in length provided that:

(1) the hose used shall be marked as acceptable for LP-gas service;

(2) the hose shall comply with NFPA 58, §§2.4.6.1 [~~2-4.6.1~~] through 2.4.6.3 [~~2-4.6.3~~];

(3)-(4) (No change.)

(b)-(c) (No change.)

§9.312. Certification Requirements for Joining Methods.

(a) In addition to the requirements in NFPA 54, §2.6.9, and NFPA 58, §2.4.4.3 [~~§2-4.4.1(c)(4)~~], and in addition to other LP-gas certification requirements, prior to performing heat-fusion on polyethylene pipe or tubing, an individual shall be certified by either the Commission or a person or certification school authorized by the Commission. The certification shall confirm that the individual has a working knowledge of heat-fusion methods and the ability to properly perform the heat-fusion activity.

(b)-(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §§9.401 - 9.403

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for

the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §§113.051 and 113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on June 10, 2003.

§9.401. Adoption by Reference of NFPA 58.

(a) Except as modified in this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association (NFPA) in its 2001 [~~1998~~] edition of the *Liquefied Petroleum Gas Code* (formerly titled *Standard for the Storage and Handling of Liquefied Petroleum Gases*), commonly referred to as NFPA 58 or Pamphlet 58, effective September 1, 2003 [~~February 1, 2001~~]. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) The Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 58, §13.1.1 [~~§12-1.1~~], which apply to LP-gas activities only. The adopted pamphlets referenced in NFPA 58 are:

(1)-(2) (No change.)

(3) NFPA 30, *Flammable and Combustible Liquids Code*, 2000 [~~1996~~] edition;

(4)-(8) (No change.)

(9) NFPA 59, *Utility LP-Gas Plant Code*, 1999 edition [~~*Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants*, 1998 edition~~];

(10)-(15) (No change.)

(16) NFPA 220, *Standard on Types of Building Construction*, 1999 edition;

(17) NFPA 251, *Standard Methods of Tests of Fire Endurance of Building Construction and Materials*, 1999 edition;

(18) [~~(16)~~] NFPA 302, *Fire Protection Standard for Pleasure and Commercial Motor Craft*, 1998 edition;

(19) [~~(17)~~] NFPA 501A, *Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities*, 2000 [~~1999~~] edition;

(20) [~~(18)~~] NFPA 505, *Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operation*, 1999 edition;

(21) [~~(19)~~] NFPA 1192, *Standard on Recreational Vehicles*, 1999 edition.

§9.402. Clarification of Certain Terms Used in NFPA 58.

(a) Authority having jurisdiction. As pertains to LP-gas activities in Texas, the phrase "authority having jurisdiction" defined in NFPA 58, §1.7 [~~§1-6~~], and referenced in other NFPA publications shall be the Railroad Commission of Texas or any of its divisions or employees, except with respect to the definitions of "approved," [~~"engineering,"~~] "labeled," and "listed" in NFPA 58, §1.7 [~~§1-6~~].

(b) (No change.)

§9.403. Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections.

(a) Table 1 of this section lists certain NFPA 58 sections which the Commission does not adopt because the Commission's corresponding rules are more pertinent to LP-gas activities in Texas, or which the Commission adopts with changed language or additional requirements in order to address the Commission's existing rules, or with corrections listed in the Errata dated November 19, 2001 [~~June 1, 1998~~], issued by NFPA to correct typographical or other errors in the published NFPA 58 pamphlet. According to NFPA, these errors may be corrected in future printings.
Figure: 16 TAC §9.403(a)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2003.

TRD-200303482
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PRACTICE AND PROCEDURE
SUBCHAPTER J. SUMMARY PROCEEDINGS

16 TAC §22.183

The Public Utility Commission of Texas (commission) proposes new §22.183 relating to Failure to Attend Hearing and Disposition by Default. The proposed new section is necessary to address issues that arise when a party without the burden of proof fails to appear for a properly noticed hearing in a proceeding initiated by the commission's Legal and Enforcement Division and subsequent disposition of the case on a default basis. The disposition by default may include suspension or revocation of any certificates, licenses, or registrations the defaulting party has with the commission but may not include administrative penalties. Project Number 27624 is assigned to this proceeding.

Mr. Christopher Gee, Attorney, Legal and Enforcement Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Gee has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the timely conclusion of cases before the commission when a party fails to appear for a hearing. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Gee has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 27624.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, §17.052, that grants the commission the authority to adopt and enforce rules to suspend or revoke certificates or registrations for repeated violations of Chapter 17, Customer Protection, or commission rules; §17.102, that grants the commission authority to adopt and enforce rules that provide for penalties for violations of §17.102, including revocation of certificates or registrations; §17.156, that grants the commission authority to revoke the registration or certificate of telecommunications service providers, retail electric providers, or electric utilities for repeated violations of Chapter 17, subchapter D, Protection Against Unauthorized Charges; §37.059, which grants the commission authority to revoke or amend a certificate of convenience and necessity after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of the certificated area; §39.356, which grants the commission authority to: 1) suspend, revoke, or amend a retail electric provider's certificate for significant violations of Title II of PURA, rules adopted under Title II, or of any reliability standard adopted by an independent organization certified by the commission to ensure reliability of a power region's electrical network, 2) suspend or revoke a power generation company's registration for significant violations of Title II of PURA, rules adopted under Title II, or of any reliability standard adopted by an independent organization certified by the commission to ensure reliability of a power region's electrical network, or 3) suspend or revoke an aggregator's registration for significant violations of Title II of PURA, or rules adopted under Title II; §54.008, which grants the commission authority to revoke or amend certificates of convenience and necessity, certificates of operating authority, or service provider certificates of operating authority after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of a certificated area; §54.105, which grants the commission authority to revoke a holder's certificate for failure to comply with PURA, Title II; §55.135, which grants the commission authority to revoke a permit for failure to comply with Chapter 55, subchapter F, Automatic Dial Announcing Devices; §55.306, which grants the commission authority to suspend, restrict, deny or revoke the registration or certificate of a telecommunications utility for repeated and reckless violations of the commission's telecommunications utility selection rules; §64.052, which grants the commission authority to suspend or revoke certificates or registrations for repeated violations of Chapter 64 or commission rules; §64.102, which grants the commission authority to revoke certificates or registrations for violations of commission rules adopted under §64.102; §64.156, which grants the commission authority to suspend, restrict or revoke the registration or certificate of a telecommunications provider who repeatedly violates Chapter 64, subchapter D, Protection Against Unauthorized Charges; and Local Government Code §283.058, which grant(s) the commission the authority to revoke or amend certificates.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 17.052, 17.102, 17.156, 37.059, 39.356, 54.008, 54.105, 55.135, 55.306, 64.052, 64.102, 64.156; and Local Government Code §283.058

§22.183. Failure to Attend Hearing and Disposition by Default.

(a) Disposition by default. Disposition by default shall mean the issuance of an order against a party who does not have the burden of proof, in a proceeding initiated by the Legal and Enforcement Division of the commission, in which the allegations against the party are deemed admitted as true, upon the offer of proof that proper notice was provided to the defaulting party. The order may include the suspension or revocation of any certificates, licenses, or registrations the defaulting party has with the commission. The order shall not include the assessment of penalties.

(b) Failure to appear.

(1) The commission may proceed in a party's absence with a disposition by default, without further notice, if a party who does not have the burden of proof fails to appear in person or through a duly authorized representative, on the day and time set for hearing.

(2) Failure of a party who does not have the burden of proof to appear at the hearing entitles the commission staff to:

(A) a continuance at the time of the contested case hearing for a reasonable period to be determined by the commission; or

(B) request issuance of a default order by the commission.

(3) If a party who does not have the burden of proof appears at the hearing, the commission may refer the matter to the State Office of Administrative Hearings for an evidentiary hearing.

(4) The commission may fully consider and dispose of the pending matter if notice has been provided in accordance with §22.54 of this title (relating to Notice to Be Provided by the Commission), and Texas Government Code §2001.054.

(c) Prerequisites for default proceeding.

(1) The commission gives 30 days notice of the prehearing conference and the hearing on the merits by certified mail, return receipt requested, to the respondent.

(2) At least 30 days has passed since the notice of the prehearing conference and the hearing on the merits was issued under paragraph (1) of this subsection.

(3) The notice of hearing must clearly state that if the respondent fails to appear at the hearing, a default final order may be issued without further notice.

(d) Admission of evidence.

(1) The Legal and Enforcement Division shall provide evidence, including, but not limited to, affidavits, exhibits, pleadings, and oral testimony, to support the issuance of the default final order and to demonstrate that the respondent received proper notice under subsection (c)(1) of this section and §22.54 of this title.

(2) If the respondent fails to appear at the hearing, the factual evidence presented under paragraph (1) of this subsection may be admitted.

(e) Default order. Default final orders shall contain findings of fact and conclusions of law sufficient to support the relief ordered.

(f) Motions for rehearing. Motions for rehearing on default judgments are governed by §22.264 of this title (relating to Rehearing).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303567
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.2, 228.10, 228.30

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC Chapter 228, Requirements for Educator Preparation Programs: §§228.2, Definitions; 228.10, Approval Process; and 228.30, Educator Preparation Curriculum. The proposed amendments would align SBEC's regulation of alternative certification programs and the beginning teachers participating in them with the requirements of the Elementary and Secondary Education Act, Title I, as reauthorized and amended by the No Child Left Behind Act of 2001 (NCLB Act) (Public Law 107-110). The amendments to chapter 228 are proposed in conjunction with amendments to 19 TAC chapter 232, relating to types and classes of certificates, proposed elsewhere in this issue. The amendments to both chapters are based on recommendations made by representatives of alternative and traditional university-based certification programs as well as a teacher's professional organization. SBEC received no adverse testimony when the Board proposed the rules.

To implement the NCLB Act, the United States Department of Education (USDE) has issued new regulations at 34 C.F.R. §200.56 setting standards for alternative route to certification programs that provide beginning teachers to public school programs supported with federal education funds intended to improve academic achievement of the disadvantaged under Title I of the Elementary and Secondary Education Act of 1965. The proposed rules would conform SBEC's regulation of alternative certification programs (ACPs) to federal standards for alternative route to certification programs.

Title I provides the state and districts funds to improve the academic achievement of the disadvantaged. Under NCLB, public schools, including charter schools, must ensure that any teacher hired after the first day of the 2002-2003 school year and who teaches a core academic subject in Title I-supported programs is "highly qualified." By the end of the 2005-2006 school year, all teachers of core academic subjects must be "highly qualified," regardless of whether they are teaching in a program supported with Title I funds or not. USDE Rule specifies the core academic subjects as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts (fine arts), history, and geography.

The new federal regulations define a "highly qualified" teacher to include those participating in alternative route to certification programs that meet certain standards. The proposed rules would conform SBEC's regulation of alternative certification programs (ACPs) to federal standards and would enable holders of SBEC's probationary certificate, which is issued to ACP participants serving as the teacher of record, to be considered "highly qualified" under the NCLB Act and USDE's implementing regulations.

The amendment adding new paragraph (4) to §228.2, relating to definitions, defines "teaching practicum," which current §228.30 requires certification candidates to complete but does not define. By using the word "supervised" in the definition, the amendment ensures compliance with federal regulation. Proposed new paragraph (5) to §228.2 defines "alternative certification program" to be the same type of educator preparation program the federal regulation refers to as "alternative route to certification program." Proposed new paragraph (6) to §228.2 provides a definition for "teacher of record" to be consistent with customary usage of the term in the education community and to distinguish the role of a probationary certificate holder participating in an ACP from that of a candidate doing student teaching as part of a traditional university-based preparation program or assuming a limited teaching role as part of another type of internship.

The proposed amendment to §228.10, relating to the approval process for educator preparation programs, puts ACPs on notice that they are primarily responsible for complying with new federal standards for alternative routes to certification programs and ensuring that their participants meet applicable federal standards for teachers to be "highly qualified."

The proposed amendments to §228.30, relating to the educator preparation curriculum, reflect SBEC's progress toward a standards-based regulatory scheme for preparation programs while ensuring that the manner in which programs achieve standards complies with federal regulations related to "highly qualified" teachers.

Steve Wright, Chief Financial Officer, State Board for Educator Certification, has determined that, for the first five-year period the rules are in effect, enforcing or administering the proposed amendments would not have foreseeable implications relating to cost or revenues of state or local governments.

Dan Junell, General Counsel, State Board for Educator Certification, has determined that, for each year of the first five years the rules are in effect, the public benefits by providing a renewable supply of highly qualified teachers prepared by alternative certification programs that comply with federal law, thereby helping

ensure Texas continues to receive federal funds for disadvantaged students.

In accordance with Section 2001.022, Government Code, SBEC has determined that the adopted rule will not impact local economies and, therefore, the agency has not filed a request for a local employment impact statement with the Texas Workforce Commission.

Implementation of the proposed rules will not affect small or micro businesses.

If adopted, the proposed rule would be a governmental action regulating issuance of an educator certificate, a statutory privilege, issued by SBEC under Chapter 21, Subchapter B, Education Code, and therefore would not affect private real property under the Private Real Property Preservation Act (Chapter 2007, Government Code).

Comments regarding the proposed amendments may be submitted to Dan Junell, General Counsel, State Board for Educator Certification, 4616 West Howard Lane, Suite 120, Austin, Texas 78728, by facsimile transmission at (512) 238-3201, or by e-mail at "dan.junell@sbec.state.tx.us."

The amendments are proposed under the statutory authority of the following sections of the Education Code: §21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued; §21.041(b)(3), which requires SBEC to specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires SBEC to specify the requirements for the issuance and renewal of an educator certificate; §21.042, which requires SBEC to submit proposed rules to the State Board of Education for review prior to adoption; §21.044, which requires SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; §21.045(a), which requires SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs; §21.049, which requires SBEC to propose rules providing for educator certification programs as an alternative to traditional educator preparation programs; §21.050, which requires SBEC to provide for a minimum number of semester credit hours of internship to be included in the hours needed for certification; and §21.051, which requires SBEC to propose rules providing flexible options for persons for any field experience or internship required for certification. The rules are also proposed under the authority of 20 U.S.C. §7801(23), relating to the definition of "highly qualified teacher," and 34 C.F.R. §200.56, adopted under the authority of §7801(23) and which requires the State to ensure federal standards for alternative routes to certification programs and their participants are met through its certification process.

No other statutes, articles, or codes are affected by the proposed amendments.

§228.2. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Ongoing experiences--experiences that are continued and built upon throughout the entire preparation program of study.

(2) Relevant experiences--experiences that directly relate to the certificate sought.

(3) Field-based experiences--experiences in which the primary activity of a candidate for certification is the performance of professional educator activities while interacting with pre-kindergarten-Grade 12 students and teachers and entity faculty/staff members in a school-related setting. The professional activities include more than observation within a classroom. The interaction with students, teachers, and entity faculty/staff must be ongoing and relevant.

(4) Teaching practicum--supervised student teaching or internship with related duties and responsibilities.

(5) Alternative certification program--an approved educator preparation program, delivered by entities described in §228.20(a) of this chapter, specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a baccalaureate degree.

(6) Teacher of record--an educator employed by a school district who teaches at least one class period in an academic instructional setting and is responsible for evaluating student achievement and assigning grades.

§228.10. Approval Process.

(a) New Entity Approval. Entities seeking initial approval to deliver educator preparation shall submit a proposal in accordance with guidelines established by the Executive Director, with evidence indicating the ability to comply with the provisions of this chapter and Chapter 227 of this title (relating to Admission to an Educator Preparation Program). The proposal must also identify the certificates proposed to be offered by the entity. The proposal will be reviewed under procedures approved by the executive director, and the executive director shall recommend to the Board whether the entity should be approved or denied accreditation pursuant to Chapter 229, §229.3(c) of this title (relating to the Accreditation Process).

(b) Continuing Entity Approval. Entities approved by the State Board for Educator Certification under this chapter shall be reviewed at least once every five years under procedures approved by the executive director; however, a review may be conducted at any time at the discretion of the executive director. Entities accredited under a Texas State Partnership Agreement with a national accrediting body shall be considered to have met the cyclical review requirements, unless the executive director determines that a review conducted by the SBEC is appropriate.

(c) Addition of Certificate Fields.

(1) Preparation programs which are fully accredited may request by "letter of intent" additional certificate fields within the classes of certificates for which they have been previously approved by the Board. The Executive Director must approve the request.

(2) Preparation programs which are fully accredited may request the addition of certificate fields in a class of certificates that has not been previously approved by the Board. Under guidelines established by the Executive Director, the entity must present a full proposal for consideration and approval by the Board.

(d) Approval of all education preparation programs by the Board or by the Executive Director, including each specific certificate field, is contingent upon approval by other lawfully established governing bodies, such as the Texas Higher Education Coordinating Board, boards of regents, or school district boards of trustees.

Continuing program approval is contingent upon compliance with superceding state or federal law or booth.

(e) Denial of Approval. Entities that fail to meet the requirements of this chapter; Chapter 227 of this title (relating to Admission to an Educator Preparation Program); or Chapter 229 of this title (relating to Accountability System for Educator Preparation), will not be approved to deliver educator preparation.

§228.30. Educator Preparation Curriculum.

(a) The educator [~~proficiencies and~~] standards adopted by the board shall be the curricular basis for all educator preparation and, for each certificate, address the relevant knowledge and skills adopted by the State Board of Education pursuant to the Texas Education Code (TEC) §28.002(c)-(d). In addition, the preparation of all candidates for certification must include the specified requirements for reading instruction adopted by the Board for each certificate. Entities shall ensure that all preparation, including field-based experiences, comply with this subsection.

(b) Educator preparation entities shall provide evidence of on-going and relevant field-based experiences throughout the program, as determined by the collaborative, in a variety of educational settings with diverse student populations, including observation, modeling, and demonstration of promising practices to improve student learning.

(c) Prior to issuance of the Standard Certificate under Chapter 232, Subchapter A [~~M~~] of this title (relating to the Types and Classes of Certificates Issued), the preparation program shall require all candidates for certification to complete a field-based [~~minimum of 12 weeks of full day teaching~~] practicum in the area and at the level for which the certificate is sought.

(1) Undergraduate teacher certification candidates, shall complete a minimum of 12 weeks of full-day teaching practicum. Supervision shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a mentor.

(2) Alternative routes to teacher certification shall provide a field-based practicum or internship that allows the candidate either to serve as teacher of record on a probationary certificate, in accordance with the conditions and requirements stipulated in §232.4 of this title for at least one school year, or to complete a teaching practicum comparable to that required in an undergraduate teacher certification program as described in this section. The internship shall include high quality professional development that is sustained, intensive, and classroom focused. Supervision shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a mentor.

(3) Programs preparing candidates for classes of certificates other than classroom teacher shall provide either a supervised field-based practicum or an internship that allows the candidate to serve as an educator on a probationary certificate in accordance with the conditions and requirements stipulated in §232.4 of this title, for candidates to develop and to demonstrate the knowledge and skills related to the certificate sought.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303670

William Franz
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 238-3280

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CHAPTER 232. GENERAL REQUIREMENTS APPLICABLE TO ALL CERTIFICATES ISSUED

The State Board for Educator Certification (SBEC) proposes changes to 19 TAC Chapter 232, General Requirements Applicable to All Certificates Issued: the repeal of subchapter M, Types and Classes of Certificates Issued, including §232.500, Types of Certificates; §232.510, Classes of Certificates; and §232.515, Development, Approval, Implementation, and Evaluation of Teacher Certification Standards; and the addition of subchapter A, Types and Classes of Certificates Issued, including §232.1, Types of Certificates; §232.2, Classes of Certificates; §232.3, Development, Approval, Implementation, and Evaluation of Teacher Certification Standards; and §232.4, Probationary Certificates. The repeal of subchapter M, §§232.500, 232.510, 232.515 and additions of subchapter A, §§232.1 - 232.3 are being proposed to renumber the affected subchapter and sections.

Proposed new §232.4 would align SBEC's regulation of beginning teachers serving on a probationary certificate while participating in an alternative certification program with the requirements of the Elementary and Secondary Education Act, Title I, as reauthorized and amended by the No Child Left Behind Act of 2001 (NCLB Act) (Public Law 107-110). Section 232.4 is proposed in conjunction with amendments to 19 TAC chapter 228, relating to requirements for educator preparation programs, proposed elsewhere in this issue. The addition of §232.4 and the amendments to chapter 228 are based on recommendations made by representatives of alternative and traditional university-based certification programs as well as a teacher's professional organization. SBEC received no adverse testimony when the Board proposed the rules.

To implement the NCLB Act, the United States Department of Education (USDE) has issued new regulations at 34 C.F.R. §200.56 setting standards for alternative route to certification programs that provide beginning teachers to public school programs supported with federal education funds intended to improve academic achievement of the disadvantaged under Title I of the Elementary and Secondary Education Act of 1965. The proposed rules would conform SBEC's regulation of alternative certification programs (ACPs) to federal standards for alternative route to certification programs.

Title I provides the state and districts funds to improve the academic achievement of the disadvantaged. Under NCLB, public schools, including charter schools, must ensure that any teacher hired after the first day of the 2002-2003 school year and who teaches a core academic subject in Title I-supported programs is "highly qualified." By the end of the 2005-2006 school year, all teachers of core academic subjects must be "highly qualified," regardless of whether they are teaching in a program supported with Title I funds or not. USDE Rule specifies the core academic subjects as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts (fine arts), history, and geography.

The new federal regulations define a "highly qualified" teacher to include those participating in alternative route to certification programs that meet certain standards. The proposed rules would conform SBEC's regulation of alternative certification programs (ACPs) to federal standards and would enable holders of SBEC's probationary certificate, which is issued to ACP participants serving as the teacher of record, to be considered "highly qualified" under the NCLB Act and USDE's implementing regulations.

The repeal of subsection (d) of §232.500 and its replacement with §232.4 provides a detailed rule governing probationary certificate holders for the first time since SBEC repealed ACP and probationary certificate rules in 1999 and adopted one set of rules to regulate all preparation programs under the same standards. Because new federal regulations, 34 C.F.R. §200.56(a)(2)(ii)(A), however, set standards for "alternative routes to certification programs" for purposes of deeming the beginning teachers who participate in them to be "highly qualified," it is necessary for SBEC to propose commensurate state rules. USDE regulation, 34 C.F.R. §200.56(a)(2)(ii)(B), requires SBEC to reflect these federal standards for ACPs and probationary certificates in board rules. Further, the proposed SBEC rules in chapters 228 and 232 will ensure that probationary certificate holders are employable as "highly qualified" beginning teachers by school districts.

Steve Wright, Chief Financial Officer, State Board for Educator Certification, has determined that, for the first five-year period the rules are in effect, enforcing or administering the proposed rules would not have foreseeable implications relating to cost or revenues of state or local governments.

Dan Junell, General Counsel, State Board for Educator Certification, has determined that, for each year of the first five years the rules are in effect, the public benefits by providing a renewable supply of highly qualified teachers prepared by alternative certification programs that comply with federal law, thereby helping ensure Texas continues to receive federal funds for disadvantaged students.

In accordance with Section 2001.022, Government Code, SBEC has determined that the adopted rule will not impact local economies and, therefore, the agency has not filed a request for a local employment impact statement with the Texas Workforce Commission.

Implementation of the proposed rules will not affect small or micro businesses.

If adopted, the proposed rule would be a governmental action regulating issuance of an educator certificate, a statutory privilege, issued by SBEC under Chapter 21, Subchapter B, Education Code, and therefore would not affect private real property under the Private Real Property Preservation Act (Chapter 2007, Government Code).

Comments regarding the proposed rules may be submitted to Dan Junell, General Counsel, State Board for Educator Certification, 4616 West Howard Lane, Suite 120, Austin, Texas 78728, by facsimile transmission at (512) 238-3201, or by e-mail at "dan.junell@sbec.state.tx.us."

SUBCHAPTER A. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §§232.1 - 232.4

The new rules are proposed under the statutory authority of the following sections of the Education Code: §21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued; §21.041(b)(3), which requires SBEC to specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires SBEC to specify the requirements for the issuance and renewal of an educator certificate; §21.042, which requires SBEC to submit proposed rules to the State Board of Education for review prior to adoption; §21.044, which requires SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; §21.045(a), which requires SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs; §21.049, which requires SBEC to propose rules providing for educator certification programs as an alternative to traditional educator preparation programs; §21.050, which requires SBEC to provide for a minimum number of semester credit hours of internship to be included in the hours needed for certification; and §21.051, which requires SBEC to propose rules providing flexible options for persons for any field experience or internship required for certification. The rules are also proposed under the authority of 20 U.S.C. §7801(23), relating to the definition of "highly qualified teacher," and 34 C.F.R. §200.56, adopted under the authority of §7801(23) and which requires the State to ensure federal standards for alternative routes to certification programs and their participants are met through its certification process.

No other statutes, articles, or codes are affected by the proposed new rules.

§232.1. Types of Certificates.

(a) "Type of certificate" means a designation of the period of validity for a certificate and includes the following certificate designations:

(1) standard;

(2) provisional;

(3) professional;

(4) one-year;

(5) probationary;

(6) temporary; and

(7) emergency.

(b) All provisional and professional lifetime educator certificates issued prior to September 1, 1999, shall be valid for the life of the individual unless suspended or revoked by lawful authority.

(c) Effective September 1, 1999, the standard certificate shall be issued for all classes of certificates as specified in §232.2 of this subchapter (relating to Classes of Certificates), and shall be valid for no more than five years, subject to the requirements of Subchapter R of this title (relating to Certificate Renewal and Continuing Professional Education Requirements).

§232.2. Classes of Certificates.

(a) "Class of certificates" means a certificate with the following characteristics:

(1) specific job duties or functions are associated with the certificate;

(2) standards are established by the board for the issuance of the certificate; and

(3) a comprehensive examination is prescribed by the board for the certificate.

(b) Classes of certificates include the following:

(1) superintendent;

(2) principal;

(3) classroom teacher;

(4) instructional educator other than classroom teacher, including reading specialist;

(5) master teacher, including master reading teacher;

(6) school librarian;

(7) school counselor;

(8) educational diagnostician; and

(9) educational aide.

§232.3. Development, Approval, Implementation, and Evaluation of Teacher Certification Standards.

(a) Purpose. The purpose of the certification standards shall be to ensure the highest level of teacher preparation and practice to achieve student excellence.

(b) Objectives. The objectives of the certification standards are:

(1) to establish the knowledge and skills required of a classroom teacher teaching in a certification field for the first time and of the master teacher;

(2) to guide the design and delivery of teacher preparation programs; and

(3) to direct the development of certification examinations and other requirements for certificate issuance.

(c) Application. This section shall apply to certificates issued within the following classes:

(1) classroom teacher; and

(2) master teacher, including master reading teacher.

(d) Policy. The State Board for Educator Certification (SBEC) shall approve certification standards based on the applicable Texas Essential Knowledge and Skills (TEKS) adopted by the State Board of Education (SBOE).

(e) Development. The SBEC shall develop the certification standards based on information provided by Texas educators, educator preparation program representatives, parents, and lay citizens. Before approving standards for a certificate, the SBEC shall make the proposed standards available for comment from the public, the SBOE, and the commissioner of education.

(f) Implementation. The SBEC's executive director and his or her designees shall be primarily responsible for implementing the certification standards approved by the SBEC by having certification examinations developed on the basis of such standards. The executive director shall provide the SBOE and commissioner of education with timely status reports regarding the implementation of approved certification standards.

(g) Evaluation. The SBEC's executive director shall periodically evaluate approved certification standards based, at a minimum, on any changes to the TEKS or the job functions and duties of the related certificate.

§232.4. Probationary Certificates.

(a) The following definitions apply, when used in this chapter, unless the rule or context in which the word or phrase is used requires a different definition:

(1) "Alternative certification program" means an educator preparation program that offers an alternative route to certification as authorized under Chapter 228 of this title, relating to Requirements for Educator Preparation Programs.

(2) "Core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, history, geography, or the arts.

(3) High-quality professional development as defined by the No Child Left Behind Act of 2001, 20 United States Code (USC), §7801 (2001, as amended), which includes, but is not limited to, activities that are sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction; that advance the teacher's understanding of effective instructional strategies; that are developed with participation of teachers, principals, parents, and administrators; and that are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement.

(4) Mentoring as defined under the No Child Left Behind Act of 2001, 20 U. S. C., §7801 which includes, but is not limited to, activities that consist of structured guidance and regular ongoing support for beginning educators, especially beginning teachers, as part of a developmental induction process designed to assist the educator in their professional growth and development. Beginning educator support is to be provided by an experienced educator who has been trained in mentoring.

(b) A probationary certificate may be issued for any class of certificate except educational aide.

(c) A probationary certificate may be issued to an individual who meets the conditions and requirements prescribed in this subsection.

(1) The individual must hold, unless otherwise approved by SBEC, at least a bachelor's degree from an institution of higher education that, when the degree was conferred, was accredited or otherwise approved by a state department of education, recognized governmental organization, or a recognized regional accrediting organization;

(2) The individual must meet appropriate requirements prescribed in §230.413 of this title, relating to General Requirements;

(3) The individual must have been accepted to participate in an approved alternative certification program and has been assigned to serve in the area and at the level of certification sought;

(4) The individual must receive mentoring and high-quality professional development that is sustained, intensive, and classroom-focused prior to and throughout the assignment;

(5) The individual must pay the fee prescribed by §230.436 of this title, relating to Schedule of Fees for Certification Fees;

(6) The teacher in a core academic subject in a program supported with funds under Title I, Part A, of the No Child Left Behind

Act of 2001, 20 U. S. C., §§6311-6339 must demonstrate mastery of each subject to be taught-

(A) at the public elementary school level, by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title, relating to Educator Assessment; or

(B) at the public middle or high school level,

(i) by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title, relating to Educator Assessment; or

(ii) have an academic major, graduate degree, or coursework equivalent to an academic major that complies with Section 21.050, Education Code, and comprises not fewer than 24 semester hours; and

(7) The teacher in a core academic subject must demonstrate mastery of each subject to be taught-

(A) at the public elementary school level, by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title, relating to Educator Assessment; or

(B) at the public middle or high school level,

(i) by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title, relating to Educator Assessment; or

(ii) have an academic major, graduate degree, or coursework equivalent to an academic major that complies with Section 21.050, Education Code, and comprises not fewer than 24 semester hours.

(d) A probationary certificate shall be valid for one calendar year from the date of issuance, except as otherwise provided under this title.

(1) A certificate may be extended for no more than two consecutive annual terms following expiration of the initial term. A probationary certificate may be extended for an annual term only if the alternative certification program recommends extension and certifies that the holder is making satisfactory progress toward standard certification.

(2) An individual may not serve for more than three school years without obtaining initial, standard certification.

(e) The executive director of the State Board for Educator Certification or a designee shall establish reasonable procedures to implement this section.

(1) Subsection (c)(6) of this section shall be effective immediately.

(2) Subsection (c)(7) of this section shall be effective and shall supersede subsection (c)(6) of this section on June 30, 2006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303672
William Franz
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 238-3280

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SUBCHAPTER M. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §§232.500, 232.510, 232.515

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the statutory authority of the following sections of the Education Code: §21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued; §21.041(b)(3), which requires SBEC to specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires SBEC to specify the requirements for the issuance and renewal of an educator certificate; §21.042, which requires SBEC to submit proposed rules to the State Board of Education for review prior to adoption; §21.044, which requires SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; §21.045(a), which requires SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs; §21.049, which requires SBEC to propose rules providing for educator certification programs as an alternative to traditional educator preparation programs; §21.050, which requires SBEC to provide for a minimum number of semester credit hours of internship to be included in the hours needed for certification; and §21.051, which requires SBEC to propose rules providing flexible options for persons for any field experience or internship required for certification. The rules are also proposed under the authority of 20 U.S.C. §7801(23), relating to the definition of "highly qualified teacher," and 34 C.F.R. §200.56, adopted under the authority of §7801(23) and which requires the State to ensure federal standards for alternative routes to certification programs and their participants are met through its certification process.

No other statutes, articles, or codes are affected by the proposed repeals.

§232.500. Types of Certificates.
§232.510. Classes of Certificates.
§232.515. Development, Approval, Implementation, and Evaluation of Teacher Certification Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

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William Franz
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 238-3280

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.20

The Texas State Board of Pharmacy proposes new §281.20, concerning Criminal Convictions. The rule, if adopted, will clarify the reasons a particular crime is considered to relate to the practice of pharmacy and specify other criteria that affect the decisions of the Board in compliance with §53.025 of the Occupations Code.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the rule. There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be the establishment of standards for the handling of criminal convictions. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with this section.

Written comments on the new section may be submitted to Gay Dodson, R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 1, 2003.

The new section is proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §53.025 of the Texas Occupations Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051, as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §53.025 as authorizing the agency to issue guidelines relating to decisions involving criminal convictions.

The statutes affected by this rule: Chapters 53, 551 - 566, and 568 - 569, Texas Occupations Code.

§281.20. Criminal Convictions.

(a) The purpose of this section is to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain a license from the board and on the disciplinary actions taken by the board.

(b) The board may suspend, revoke, or impose other authorized disciplinary action on a current license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a crime that directly relates to the duties and responsibilities of a licensee or of an owner of a pharmacy. This subsection applies to persons who are not imprisoned at the time the board considers the conviction.

(c) The board shall revoke a license upon the imprisonment of the licensee or the owner of a pharmacy following a felony conviction or revocation of felony community supervision, parole, or mandatory supervision.

(d) A person in prison is not eligible for a license.

(e) An applicant for a license from the board shall disclose in writing to the board any conviction against him or her at the time of application. A current licensee shall disclose in writing to the board any conviction against him or her at the time of renewal.

(f) In considering whether a criminal conviction directly relates to the occupation of a licensee or the operation of a pharmacy, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation of the licensee or the operation of a pharmacy.

(3) the extent to which a license might afford the licensee an opportunity to repeat the criminal activity in which the person had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensee.

(g) In reaching a decision regarding the type of disciplinary sanction to impose on license, the board shall also determine the person's fitness to perform the duties and discharge the responsibilities of a licensee based on:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff and chief of police in the community where the person resides; and

(C) any other persons in contact with the convicted person.

(h) A person with a conviction shall:

(1) to the extent possible, secure and provide to the board the recommendations of the prosecution, law enforcement, and correctional authorities specified in subsection (g)(6) of this section;

(2) cooperate with the board by providing the information required by this section, including proof that he or she has:

(A) maintained a record of steady employment, as evidenced by salary stubs, income tax records or other employment

records for the time since the conviction and/or release from imprisonment;

(B) supported his or her dependents, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction and/or release from imprisonment, and a letter from the spouse or other parent;

(C) maintained a record of good conduct as evidenced by letters of recommendation, absence of other criminal activity or documentation of community service since conviction; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, as evidenced by certified copies of a court release or other documentation from the court system that all monies have been paid.

(i) The following crimes relate to board licensees. The commission of each indicates an inability or a tendency for the person to be unable to perform or to be unfit for licensure, because violation of such crimes indicates a lack of integrity and respect for one's fellow human being and the community at large. The direct relationship to a license is presumed when the crime occurs in connection with the practice of pharmacy or the operation of a pharmacy.

(1) practicing or operating a pharmacy without a license and other violations of the Pharmacy Act;

(2) deceptive business practices;

(3) medicare or medicaid fraud;

(4) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child;

(H) injury to an elderly person;

(I) child abuse or neglect;

(J) tampering with a governmental record;

(K) forgery;

(L) perjury;

(M) failure to report abuse;

(N) bribery;

(O) harassment;

(P) insurance claim fraud;

(Q) solicitation of professional employment under the Penal Code §38.12(d) or Occupations Code, Chapter 102; or

(R) mail fraud;

(5) delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug, or narcotic; or

(6) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or to be unfit for licensure, if action by the board will promote the intent of the Pharmacy Act, board rules including this chapter, and Occupations Code, Chapter 53.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303513
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 305-8028

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22 TAC §281.22

The Texas State Board of Pharmacy proposes amendments to §281.22, concerning Informal Disposition of a Contested Case. These amendments, if adopted, will allow the Board to informally dispose of a case by entering a default order without the necessity of proceeding to a hearing at the State Office of Administrative Hearings (SOAH). A default order is only applicable when the licensee fails to respond to the notice of allegations by the Board.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the rule. There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be the establishment of standards for handling default cases against licensees, allowing the Board to process disciplinary cases in a more efficient and timely manner. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with this section.

Written comments on the amendments may be submitted to Gay Dodson, R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 1, 2003.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051, as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this proposal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.22. Informal Disposition of a Contested Case.

(a) (No change.)

(b) Prior to the imposition of disciplinary sanction(s) against a license, the board shall provide the licensee with written notice of the matters asserted, including: [~~the licensee shall be offered an opportunity to attend an informal conference and show compliance with all~~

~~requirements of law, in accordance with §2001.054(c) of the Administrative Procedure Act.~~]

(1) a statement of the legal authority, jurisdiction, and alleged conduct under which the enforcement action is based, with a reference to the particular section(s) of the statutes and rules involved;

(2) an offer for the licensee to attend an informal conference at a specified time and place and show compliance with all requirements of law, in accordance with §2001.054(c) of the Administrative Procedure Act;

(3) a statement that the licensee has an opportunity for a hearing before the State Office of Administrative Hearings on the allegations; and

(4) the following statement in capital letters in 12 point boldface type: FAILURE TO RESPOND TO THE ALLEGATIONS, BY EITHER PERSONAL APPEARANCE AT THE INFORMAL CONFERENCE OR IN WRITING, WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION MADE AT THE INFORMAL CONFERENCE BEING GRANTED BY DEFAULT. The notice shall be served by delivering a copy to the licensee in person, by courier receipted delivery, by first class mail, or by certified or registered mail, return receipt requested to the licensee's last known address of record as shown by agency records.

(c) The licensee shall respond by either personal appearance at the informal conference or in writing no later than the date of the informal conference. If the licensee chooses to respond in writing, the response shall admit or deny each of the allegations. If the licensee intends to deny only a part of an allegation, the licensee shall specify so much of it is true and shall deny only the remainder. The response shall also include any other matter, whether of law or fact, upon which the licensee intends to rely for his or her defense. If the licensee fails to respond to the notice specified in subsection (b) of this section, the matter will be considered as a default case and the licensee will be deemed to have:

(1) admitted all the factual allegations in the notice specified in subsection (b) of this section;

(2) waived the opportunity to show compliance with the law;

(3) waived notice of a hearing;

(4) waived the opportunity for a hearing on the allegations; and

(5) waived objection to the recommended sanctions made at the informal conference.

(d) The informal conference panel may recommend that the board enter a default order, based upon the allegations set out in the notice specified in subsection (b) of this section, adopting the recommended sanctions made at the informal conference. Upon consideration of the case, the Board may enter a default order under §2001.056 of the Administrative Procedure Act or direct that the case be set for a hearing at the State Office of Administrative Hearings.

(e) Any default judgment granted under this section will be entered on the basis of the factual allegations in the notice specified in subsection (b) off this section, and upon proof of proper notice to the licensee's address of record. For purposes of this section, proper notice means notice sufficient to meet the provisions of §2001.054 of the Administrative Procedure Act and §281.25 of these rules.

(f) A motion for rehearing which requests that the Board vacate its default order under this section shall be granted if the motion presents convincing evidence that the failure to respond to the notice specified in subsection (b) of this section was not intentional or the result of conscious indifference, but due to accident or mistake, provided that the licensee has a meritorious defense to the factual allegations contained in the notice specified in subsection (b) of this section and the granting thereof will not result in delay or injury to the public or the Board.

(g) [~~(c)~~] Informal conferences shall be attended by the executive director/secretary or designated representative, legal counsel of the agency or an attorney employed by the office of the attorney general, and other representative(s) of the agency as the executive director/secretary and legal counsel may deem necessary for proper conduct of the conference. The licensee and/or the licensee's authorized representative(s) may attend the informal conference and shall be provided an opportunity to be heard.

(h) [~~(d)~~] In any case where charges are based upon information provided by a person (complainant) who filed a complaint with the board, the complainant may attend the informal conference, unless the proceedings are confidential under §564.002 and §564.003 of the Texas Pharmacy Act or other applicable law. A complainant who chooses to attend an informal conference shall be provided an opportunity to be heard with regard to charges based upon the information provided by the complainant. Nothing herein requires a complainant to attend an informal conference.

(i) [~~(e)~~] Informal conferences shall not be deemed meetings of the board and no formal record of the proceedings at such conferences shall be made or maintained.

(j) [~~(f)~~] Any proposed consent order shall be presented to the board in open meeting for its review. At the conclusion of its review, the board shall approve or disapprove the proposed consent order. Should the board approve the proposed consent order, the appropriate notation shall be made in minutes of the board and the proposed consent order shall be entered as an official action of the board. Should the board disapprove the proposed consent order, the matter shall be scheduled for public hearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2003.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 305-8028

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CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.6

The Texas State Board of Pharmacy proposes amendments to §283.6, concerning Preceptor Requirements. These amendments, if adopted, will change the initial and continuing education requirements for a preceptor to allow courses approved by the colleges of pharmacy as well as courses developed by the colleges.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the rule. There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be the establishment of standards for preceptor training. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with this section.

Written comments on the amendments may be submitted to Gay Dodson, R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 1, 2003.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this proposal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§283.6. Preceptor Requirements.

(a) - (b) (No change.)

(c) For certification as a preceptor a pharmacist must:

(1) (No change.)

(2) have completed:

(A) for initial certification, three hours of preceptor training provided by an ACPE approved provider within the previous two years. Such training shall be:

(i) developed by a Texas college of pharmacy [~~and provided by an ACPE approved provider within the previous two years~~]; or

(ii) approved by:

(I) a committee comprised of the Texas colleges of pharmacy; or

(II) the board; or

(B) to continue certification, three hours of preceptor training provided by an ACPE approved provider within the preceptor pharmacist's current license renewal period. Such training shall be:

(i) developed by a Texas college of pharmacy [~~and provided by an ACPE approved provider within the preceptor pharmacist's current license renewal period~~]; or [~~and~~]

(ii) approved by:

(I) a committee comprised of the Texas colleges of pharmacy; or

(II) the board; and

(3) meet the requirements of subsection (f) of this section.

[~~(d) Beginning July 1, 2002, approval and certification as a preceptor shall coincide with the preceptor pharmacist's license renewal period. For preceptors whose preceptor certification expires on or after July 1, 2002, the Board shall extend their preceptor expiration date to the next expiration date of the preceptor pharmacist's license.~~]

(d) [~~(e)~~] A preceptor may supervise only one pharmacist-intern at any given time. Texas Colleges of Pharmacy may request a different preceptor to pharmacist-intern ratio during the board's annual review and approval of their college based, structured internship program. Any such ratio shall apply only to the internship experience acquired as a part of the college based, structured internship program.

(e) [~~(f)~~] No pharmacist may serve as a preceptor if his or her license to practice pharmacy has been the subject of an order of the board imposing any penalty set out in the Act, §565.051, during the period he or she is serving as a preceptor or within the three-year period immediately preceding application for approval as a preceptor. Provided, however, a pharmacist who has been the subject of such an order of the board may petition the board, in writing, for approval to act as a preceptor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2003.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.35

The Texas State Board of Pharmacy proposes amendments to §291.35, concerning Triplicate Prescription Requirements. These amendments, if adopted, will correct the title of the section and correct statutory references to Texas Department of Public Safety (DPS) rules.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the rule. There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be the establishment of standards for the official prescriptions. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with this section.

Written comments on the amendments may be submitted to Gay Dodson, R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 1, 2003.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as

authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051, as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this proposal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.35. Official [~~Triplicate~~] Prescription Requirements.

The Texas State Board of Pharmacy adopts by reference the rules promulgated by the Texas Department of Public Safety, which are set forth in Subchapter D of 37 TAC §§13.71 - 13.86 concerning official prescriptions. [~~Subchapter F of 37 TAC §§13.101 - 13.113 concerning triplicate prescriptions~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303516
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 305-8028

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

The Texas Department of Health (department) proposes the repeal of §§37.231-37.244, concerning the Maternal and Infant Health Improvement Program; §§37.261-37.270, concerning the State Maternal and Infant Health Care Program Advisory Committee; and §37.281, concerning the Maternal and Child Health Advisory Committee.

Specifically, §§37.231-37.244 cover purpose and scope; definitions; program; contract and written agreements; selection of providers; eligibility for prenatal care services; eligibility for high-risk patient services; services provided to patients; coordination of benefits and recovery of costs; denial/modification/suspension/termination of services; development and improvement of guidelines and services; appeals, confidentiality, gifts, and nondiscrimination; items adopted by reference; and memorandum of understanding. Sections 37.261-37.270 cover authorization; purpose; membership; officers; meetings; quorum; subcommittees; parliamentary procedure; minutes; and public participation. Section 37.281 covers procedures of the Maternal and Child Health Advisory Committee.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.231-37.244, 37.261-37.270, and 37.281 have been reviewed, and the department has determined that reasons for adopting the sections do not exist. Since the maternal and infant health improvement program and both advisory committees are no longer operational, the rules are not needed.

The department published a Notice of Intention to Review for §§37.231-37.244, 37.261-37.270, and 37.281 as required by Government Code, §2001.039, in the *Texas Register* on April 28, 2000, (25 TexReg 3799). No comments were received as a result of the publication of the notice.

Chan McDermott, Perinatal Health Program Coordinator, has determined that for each year of the first five years the repeal of the sections is in effect, there will be no fiscal implications as a result of enforcing or administering the repeal of the sections for state or local government. Neither the program nor the two advisory committees are operational, and no funds have been or will be expended for their administration.

Ms. McDermott has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of enforcing the repeal will be increased clarity and more efficient use of the department's rules by elimination of sections that are no longer necessary. There will be no costs to small businesses or micro-businesses since none of these entities has ever been required to comply with the sections. There are no anticipated costs to persons who are required to comply with the sections as proposed. No impact on local employment is anticipated.

Comments on the proposal may be submitted to Chan McDermott, Perinatal Health Program Coordinator, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3139, (512) 458-7796. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

SUBCHAPTER L. MATERNAL AND INFANT HEALTH IMPROVEMENT PROGRAM

25 TAC §§37.231 - 37.244

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Health and Safety Code, §32.006, which directs the Board of Health (board) to adopt rules necessary to administer Chapter 32; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeal of the sections affects Health and Safety Code, Chapter 32; and implements Government Code, §2001.039.

§37.231. Purpose and Scope.
§37.232. Definitions.
§37.233. Program.
§37.234. Contract and Written Agreements.
§37.235. Selection of Providers.
§37.236. Eligibility for Prenatal Care Services.
§37.237. Eligibility for High-Risk Patient Services.
§37.238. Services Provided to Patients.
§37.239. Coordination of Benefits and Recovery of Costs.
§37.240. Denial/Modification/Suspension/Termination of Services.
§37.241. Development and Improvement of Guidelines and Services.
§37.242. Appeals, Confidentiality, Gifts, and Nondiscrimination.
§37.243. Items Adopted by Reference.

§37.244. Memorandum of Understanding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303562
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER N. STATE MATERNAL AND INFANT HEALTH CARE PROGRAM ADVISORY COMMITTEE

25 TAC §§37.261 - 37.270

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Health and Safety Code, §32.006, which directs the Board of Health (board) to adopt rules necessary to administer Chapter 32; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeal of the sections affects Health and Safety Code, Chapter 32; and implements Government Code, §2001.039.

§37.261. Authorization.

§37.262. Purpose.

§37.263. Membership.

§37.264. Officers.

§37.265. Meetings.

§37.266. Quorum.

§37.267. Subcommittees.

§37.268. Parliamentary Procedure.

§37.269. Minutes.

§37.270. Public Participation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER O. MATERNAL AND CHILD HEALTH ADVISORY COMMITTEE

25 TAC §37.281

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Health and Safety Code, §32.006, which directs the Board of Health (board) to adopt rules necessary to administer Chapter 32; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeal of the section affects Health and Safety Code, Chapter 32; and implements Government Code, §2001.039.

§37.281. Procedures of the Maternal and Child Health Advisory Committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303564
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 458-7236

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CHAPTER 109. TEXAS DEPARTMENT OF HEALTH HOSPITALS

The Texas Department of Health (department) proposes the repeal of §§109.1-109.7, 109.15, and 109.25-109.31, concerning the department's hospitals, which consist of Texas Center for Infectious Disease (TCID) and South Texas Health Care System (STHCS). The sections affect matters related to internal management and operation of TCID and STHCS, and management of certain tuberculosis patient affairs.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The sections have been reviewed and the department has determined that the reasons for adopting the sections do not continue to exist due to organizational changes in facility management and operation, as statutorily mandated by Acts, 76th Legislature, 1999, Chapter 264 (House Bill 1748) and Chapter 1106 (House Bill 3504); and Acts, 77th Legislature, 2001, Article II, page II-45, §68, and Article IX, page IX-107, §10.87. Changes in the management of tuberculosis patient affairs have been maintained to conform with hospital standards published by private accreditation manuals and considered best practice. Also, written policies supersede the sections. The current rules are obsolete.

The department published a Notice of Intention to Review the sections as required by Government Code, §2001.039, in the January 7, 2000, issue of the *Texas Register* (25 TexReg 219). No comments were received as a result of this publication.

Each section was analyzed for current applicability and for need to delete obsolete, unenforceable, and unnecessary language. The proposed repeal of the rules will more accurately reflect the manner in which each facility is currently managed and operated and will improve the flexibility of written policies in place at each facility, including written policies that relate to tuberculosis patient management. Flexibility is needed in the changing legal environment related to operation and management of the facilities.

Jim Elkins, Hospital Director for TCID, and Maria Diaz, Director of STHCS, have each determined that for each year of the first five-years the sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the repeal of the sections as proposed.

Mr. Elkins and Dr. Diaz have also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing or administering the rules will be to maintain greater flexibility in the operation and management of each facility in order to continue the provision of public health care services by each facility.

There will be no costs to micro-businesses or small businesses to comply with the sections as proposed, because the sections that affect third parties have been superceded by written policies, and the sections as proposed do not change the management or operation of TCID or STHCS and do not change the management of tuberculosis patient affairs. The sections as proposed eliminate obsolete provisions that have been replaced by written policies applicable to each facility. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Sharon Alexander, Assistant General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7236. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

SUBCHAPTER A. HOSPITAL AND MEDICAL STAFF BYLAWS

25 TAC §§109.1 - 109.7, 109.15

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of these sections is proposed under the Texas Health and Safety Code, §12.001, which provides the Board of Health (board) with the authority to adopt rules and to implement every duty imposed by law on the board, the department, and the commissioner of health; and, under Texas Health and Safety Code, Chapter 13, which provides the board with authority to operate the department hospitals.

The sections proposed for repeal affect the Texas Health and Safety Code, Chapters 12 and 13, concerning operation and management of the facilities and management of tuberculosis patient affairs; and also affect Texas Health and Safety Code, Chapter 81, concerning prevention and control of communicable diseases, including tuberculosis patient quarantine procedures. The sections proposed for repeal also implement Government Code, §2001.039.

§109.1. Purpose.

§109.2. Definitions.

§109.3. Governance.

§109.4. Hospital Bylaws.

§109.5. Hospital Committees.

§109.6. Medical Staff.

§109.7. Auxillary Organizations.

§109.15. Medical Staff Bylaws.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER B. TUBERCULOSIS

25 TAC §§109.25 - 109.31

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of these sections is proposed under the Texas Health and Safety Code, §12.001, which provides the Board of Health (board) with the authority to adopt rules and to implement every duty imposed by law on the board, the department, and the commissioner of health; and, under Texas Health and Safety Code, Chapter 13, which provides the board with authority to operate the department hospitals.

The sections proposed for repeal affect the Texas Health and Safety Code, Chapters 12 and 13, concerning operation and management of the facilities and management of tuberculosis patient affairs; and also affect Texas Health and Safety Code, Chapter 81, concerning prevention and control of communicable diseases, including tuberculosis patient quarantine procedures. The sections proposed for repeal also implement Government Code, §2001.039.

§109.25. Patient Transfers.

§109.26. Funeral Service Contracts.

§109.27. Gifts, Grants, and Donations.

§109.28. Clothing Needs of Patients.

§109.29. Marking of Indigent Patients' Graves.

§109.30. Admission of Quarantine Patients.

§109.31. Disposition of Patients' Trust Funds and Miscellaneous Personal Property.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 458-7236

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CHAPTER 123. RESPIRATORY CARE PRACTITIONER CERTIFICATION

25 TAC §123.3

The Texas Department of Health (department) proposes an amendment to §123.3, concerning the Respiratory Care Practitioners Advisory Committee (committee). The committee has provided advice to the Texas Board of Health (board) and the department related to rules and examinations for the certification of respiratory care practitioners. The committee is established under the Health and Safety Code, §11.016, which allows the board to establish advisory committees. The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §123.3 and has determined that reasons for adopting the section continue to exist; however, changes were necessary as described in this preamble.

The department published a Notice of Intention to Review for §123.3 in the *Texas Register* on May 30, 2003 (28 TexReg 4325). No comments were received due to publication of this notice.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110), which requires that each state agency adopt rules on advisory committees. The rules must state the purpose of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 2001, the board established a rule relating to the Respiratory Care Practitioners Advisory Committee. The rule states that the committee will automatically be abolished on November 1, 2003. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until November 1, 2007.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to: continue the committee until November 1, 2007; specify that the committee appoints its presiding and assistant presiding officers; include additional requirements regarding statements by members; and clarify the components that the committee must include in an annual report to the board.

Jacquelyn McDonald, Director of the Office of the Board of Health, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state and local government as a result of administering the section as proposed.

Ms. McDonald has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of amending the section will be to provide a continuance of the committee and continued advice to the department on this important issue. There will be no costs to small business or micro-business resulting from compliance with this section, as this section addresses only continuance of the committee; terms of office; statements by members; and information to be included in the annual report. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

Comments may be submitted to Jacquelyn McDonald, Director, Office of the Board of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner; and Government Code, §2110.005, which requires the department to adopt rules stating the purpose and tasks of its advisory committees.

The proposed amendment affects the Health and Safety Code, Chapters 11 and 12; the Government Code, Chapter 2110; and implements Government Code, §2001.039.

§123.3. Respiratory Care Practitioners Advisory Committee.

(a)-(d) (No change.)

(e) Review and duration. By November 1, 2007 [~~2003~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f)-(g) (No change.)

(h) Officers. The committee [~~chairman of the board~~] shall select from its members the [~~appoint a~~] presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year.

(1) Each officer shall serve until October 31 of each odd-numbered year. Each officer may holdover until his or her replacement is elected. [~~the next regular appointment of officers.~~]

(2) (No change.)

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will [~~serve until a successor is appointed to~~] complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled [~~temporarily~~] by vote of the committee [~~until a successor is appointed by the chairman of the board~~].

(5)-(6) (No change.)

[~~(7) The presiding officer and assistant presiding officer serving on October 1, 1999, will continue to serve until the chairman of the board appoints their successors.~~]

(i)-(m) (No change.)

(n) Statement by members.

(1)-(2) (No change.)

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) (No change.)

(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) (No change.)

(p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303565
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 458-7236

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CHAPTER 129. OPTICIANS' REGISTRY

The Texas Department of Health (department) proposes amendments to §§129.1 - 129.2 and the repeal of §129.3, concerning the Opticians' Registry Advisory Committee (committee). The committee has provided advice to the Texas Board of Health (board) and the department in the area of opticianry and the regulation of dispensing opticians.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110), which requires that each state agency adopt rules on advisory committees. The rules must state the purpose of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 2001, the board established a rule relating to the Opticians' Registry Advisory Committee. The rule states that the committee will automatically be abolished on November 1, 2003, and the board has determined that the committee should be abolished on that date. Issues relating to the type of advice previously provided by the committee are better addressed through the establishment of ad hoc workgroups.

The amendments to §§129.1 and 129.2 and the repeal of §129.3 are necessary to eliminate language referencing the committee.

Jacquelyn McDonald, Director, Office of the Board of Health, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering these sections.

Ms. McDonald has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated will be increased flexibility and breadth in obtaining specific input on issues related to opticianry and the regulation of dispensing opticians. There will be no effect on micro-businesses or small businesses. The proposed rules will not require small businesses and micro-businesses to alter their business practices. There is no economic costs to persons as a result of the elimination of all references to the committee. There will be no effect on local employment.

Comments may be submitted to Jacquelyn McDonald, Director, Office of the Board of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 512-458-7484. Comments on the proposed sections will be accepted for 30 days following publication in the *Texas Register*.

25 TAC §129.1, §129.2

The amendments are proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

The proposed amendments affect the Health and Safety Code, Chapter 11; and the Government Code, Chapter 2110.

§129.1. Purpose and Construction.

(a) (No change.)

(b) Construction. These sections cover definitions; [~~organization, administration and operation of the committee;~~] fees; application procedures and requirements; applicant eligibility and registration; examination; renewal of registration certificates; requirements for continuing education; name or address changes; procedures for violations, complaints, investigation of complaints, and disciplinary actions; registration of applicants with criminal backgrounds; and professional and ethical standards.

§129.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(8) (No change.)

[~~(9) Committee--The eleven member Opticians' Registry Advisory Committee.~~]

(9) [~~(10)~~] Department--The Texas Department of Health.

(10) [~~(11)~~] Dispensing optician--A person who provides or offers to provide spectacle or contact lens dispensing services or products to the public.

(11) [~~(12)~~] Dual application--An application by one person as both a registered spectacle dispensing optician and a registered contact lens dispenser.

(12) [~~(13)~~] Examination--A qualifying test administered to eligible applicants by the department or its designee.

(13) [~~(14)~~] Registered contact lens dispenser--A person properly registered under the Act as a contact lens dispenser.

(14) [~~(15)~~] Registered spectacle dispensing optician--A person properly registered under the Act as a spectacle dispensing optician.

(15) [~~(16)~~] Registration certificate--A document issued by the department to a qualified person authorizing that person to represent that he or she is registered under the Act.

(16) [~~(17)~~] Spectacle dispensing--The design, verification, fitting, adjustment, sale, and delivery to the consumer of fabricated and finished spectacle lenses, frames, or other ophthalmic devices, other than contact lenses, prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist. The term includes:

(A) prescription analysis and interpretation;

(B) the taking of measurements of the face, including interpupillary distances, to determine the size, shape, and specification of the spectacle lenses or frames best suited to the wearer's needs;

(C) the preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabricating spectacles;

(D) the verification of the quality of finished spectacle lenses;

(E) the adjustment of spectacle lenses or frames to the intended wearer's face; and

(F) the adjustment, repair, replacement, reproduction, or duplication of previously prepared spectacle lenses, frames, or other specially fabricated optical devices, other than contact lenses.

(17) [~~(18)~~] Spectacle prescription--A written specification by a licensed physician or optometrist for therapeutic or corrective lenses that states the refractive power of the product and other information as required by the physician or optometrist.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200303559
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 458-7236

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25 TAC §129.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health. The proposed repeal affects the Health and Safety Code, Chapter 11; and the Government Code, Chapter 2110.

§129.3. Opticians' Registry Advisory Committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303558
Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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CHAPTER 143. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §143.3

The Texas Department of Health (department) proposes an amendment to §143.3, concerning the Medical Radiologic Technologist Advisory Committee (committee). The committee has provided advice to the Texas Board of Health (board) and the department related to rules and examinations for the certification of medical radiologic technologists. The committee is established under the Health and Safety Code, §11.016, which allows the board to establish advisory committees. The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §143.3 and has determined that reasons for adopting the section continue to exist; however, changes were necessary as described in this preamble.

The department published a Notice of Intention to Review for §143.3 in the *Texas Register* on May 30, 2003 (28 TexReg 4325). No comments were received due to publication of this notice.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110), which requires that each state agency adopt rules on advisory committees. The rules must state the purpose of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 2001, the board established a rule relating to the Medical Radiologic Technologist Advisory Committee. The rule states that the committee will automatically be abolished on November 1, 2003. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until November 1, 2007.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to: continue the committee until November 1, 2007; specify that the committee appoints its presiding and assistant presiding officers; indicate the terms of office; include additional requirements regarding statements by members; and clarify the components that the committee must include in an annual report to the board.

Jacquelyn McDonald, Director of the Office of the Board of Health, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state and local government as a result of administering the section as proposed.

Ms. McDonald has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of amending the section will be to provide a continuance of the committee and continued advice to the department on this important issue. There will be no costs to small business or micro-business resulting from compliance with this section, as this section addresses only continuance of the committee; the terms of office; and statements and/or actions by members. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

Comments may be submitted to Jacquelyn McDonald, Director, Office of the Board of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner; and Government Code, §2110.005, which requires the department to adopt rules stating the purpose and tasks of its advisory committees.

The proposed amendment affects the Health and Safety Code, Chapters 11 and 12; the Government Code, Chapter 2110; and implements Government Code, §2001.039.

§143.3. Medical Radiologic Technologist Advisory Committee.

(a)-(d) (No change.)

(e) Review and duration. By November 1, 2007 [~~2003~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall [~~will~~] be abolished on that date.

(f)-(g) (No change.)

(h) Officers. The committee [~~chairman of the board~~] shall select from its members the [~~appoint a~~] presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year.

(1) Each officer shall serve until October 31 of each odd-numbered year. Each officer may holdover until his or her replacement is elected. [~~the next regular appointment of officers.~~]

(2) (No change.)

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will [~~serve until a successor is appointed to~~] complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled [~~temporarily~~] by vote of the committee [~~until a successor is appointed by the chairman of the board~~].

(5)-(6) (No change.)

[~~(7) The presiding officer and assistant presiding officer serving on October 1, 1999, will continue to serve until the chairman of the board appoints their successors.~~]

(i)-(m) (No change.)

(n) Statements by members.

(1)-(2) (No change.)

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) (No change.)

(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) (No change.)

(p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303557
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 458-7236

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CHAPTER 146. TRAINING AND REGULATION OF PROMOTORAS

25 TAC §146.2

The Texas Department of Health (department) proposes an amendment to §146.2, concerning the Promotor(a) or Community Health Worker Training and Certification Advisory Committee (committee). The committee has provided advice to the Texas Board of Health (board) and the department related to the review of applications and the recommendation of qualifying applicants as sponsoring institutions, training instructors or as promotores(as) or community health workers. The committee also recommends new or amended rules for the approval of the board. The committee is established under the Health and Safety Code, §11.016, which allows the board to establish advisory committees. The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §146.2 and has determined that reasons for adopting the section continue to exist; however, changes were necessary as described in this preamble.

The department published a Notice of Intention to Review for §146.2 in the *Texas Register* on May 2, 2003 (28 TexReg 3741). No comments were received due to publication of this notice.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110), which requires that each state agency adopt rules on advisory committees. The rules must state the purpose of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 2001, the board established a rule relating to the Promotor(a) or Community Health Worker Training and Certification Advisory Committee. The rule states that the committee will automatically be abolished on November 1, 2003. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until November 1, 2007.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to: continue the committee until November 1, 2007; change the terms of committee membership from four years to six years; include additional requirements regarding statements by members; add requirements related to travel reimbursement; and clarify the components that the committee must include in an annual report to the board.

Jacquelyn McDonald, Director of the Office of the Board of Health, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state and local government as a result of amending the section as proposed.

Ms. McDonald has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of amending the section will be to provide a continuance of the committee and continued advice to the department on this important issue.

There will be no costs to small business or micro-business resulting from compliance with this section, as this section addresses only continuance of the committee; terms of office; statements by members; adds requirements related to travel reimbursement; and the information to be included in an annual report. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

Comments may be submitted to Jacquelyn McDonald, Director, Office of the Board of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner; and Government Code, §2110.005, which requires the department to adopt rules stating the purpose and tasks of its advisory committees.

The proposed amendment affects the Health and Safety Code, Chapters 11 and 12; the Government Code, Chapter 2110; and implements Government Code, §2001.039.

§146.2. Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

(a)-(d) (No change.)

(e) Review and duration. By November 1, 2007 [~~2003~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of nine members appointed by the board. The composition of committee shall include:

(1)-(2) (No change.)

(3) one member from the Texas Higher Education Coordinating Board, or a higher education faculty member who has teaching experience in community health, public health or adult education and has trained promotores(as) or community health workers; and

(4) two professionals who work with promotores(as) or community health workers in a community setting. [~~;~~]

(g) Terms of office. The term of office of each member shall be six [~~four~~] years, and the member may be reappointed.

(1)-(2) (No change.)

(h)-(m) (No change.)

(n) Statement by members. [~~The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except what a statement or action is in pursuit of specific instructions from the board, department, or committee.~~]

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) (No change.)

(2) The report shall identify the costs related to the committee's existence, including the cost of department [~~agency~~] staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) (No change.)

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms not later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state vouchers prepared by department staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303556

Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 458-7236

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PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 419. MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

25 TAC §§419.153, 419.155, 419.159, 419.166

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §419.153, concerning definitions; §419.155, concerning eligibility criteria; §419.159, concerning level of care (LOC) determination; and §419.166 concerning revisions and renewals of individual plans of care (IPCs), levels of care (LOCs) and levels of need (LONs) for enrolled individuals.

The proposed amendments are in response to new Texas Health and Safety Code, §533.0355, added by House Bill 2292 of the 78th Legislature, which redefines the responsibilities of a mental retardation authority, a program provider, and the department under the Mental Retardation Local Authority (MRLA) Program, a Medicaid waiver program under §1915(c) of the Social Security Act operated by the department. New §533.0355 requires the department to redesign the program model underlying the MRLA Program. Until the department can redesign the MRLA Program to conform to the new statutory requirements, the proposed amendments will allow the department to continue services to all current MRLA Program consumers under the existing Home and Community-based Services (HCS) Program. In addition, the department will consolidate services provided through the Home and Community-Based--OBRA (HCS-O) Program with the HCS Program. The department intends to retract its proposed repeal of Chapter 419, Subchapter D, concerning the Home and Community-Based Service Program, which was published in the June 13, 2003, issue of the *Texas Register* (28 TexReg 4520).

The amendments to §419.155 revise the HCS Program eligibility criteria to include individuals who are currently enrolled in the MRLA or HCS-O Programs. The section is also revised to include individuals who have been determined by the department to have an Intermediate Care Facility for Persons with Mental Retardation (ICF/MR) I or VIII level of care (LOC) and have been determined by the Texas Department of Human Services to have mental retardation or a related condition, to need specialized services, and to be inappropriately placed in a Medicaid certified nursing facility based on an annual resident review conducted in accordance with Texas Administrative Code, Title 40, §19.2500.

The amendments to §419.153 and §419.166(a) assure the continued application of the principles of person-directed planning and permanency planning during the development of individual service plans. These planning principles are an important part of a consumer-focused service system that the department wants

to ensure are incorporated into all service planning activities. In addition, the rule reference is corrected in the definition of program provider in §419.153.

The amendments to §419.159(b) require the department to make a determination of LOC based on the ICF/MR LOC I or LOC VIII criteria. The reference to the ICF/MR rules regarding level of care assignment has been changed to clarify the applicable sections.

Cindy Brown, Chief Financial Officer, has determined that, for each year of the first five year period that the proposed amendments are in effect, there are foreseeable implications relating to costs or revenues of state government. The result will be a minimal cost savings of general revenue and loss of federal funding. The department does not anticipate that the amendments will have an adverse effect on small or micro-businesses. The department does not anticipate that there will be any additional economic cost to persons required to comply with the amendments. The department does not anticipate that the amendments will affect a local economy.

Barry Waller, Director, Long Term Services and Supports, has determined that, for each year of the first five-year period the proposed amendments are in effect, the public benefit expected is that, until the department can redesign the MRLA Program consistent with new statutory requirements, Medicaid waiver services and supports will continue to be provided to consumers through one program, the HCS Program, rather than multiple programs.

Comments concerning the proposed amendments must be submitted in writing to Linda Logan, Director, Policy Development, by mail to P.O. Box 12668, Austin, Texas 78711, by fax to (512) 206-4744, or by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Friday, July 18, 2003, in the department's Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Long Term Services and Supports at least 72 hours prior to the hearing at (512) 206-4706 or at the TDY phone number of Texas Relay, 1-800-735-2988.

The amendments are proposed under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; the Texas Government Code (TGC), §531.021(a), and the Texas Human Resources Code (THSC), §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the THSC, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS Program.

The proposed amendments affect TGC, §531.021(a), and THRC, §32.021(a) and (c).

§419.153. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (14) (No change.)

(15) ISP (individual service plan)--A written plan, from which the IPC is derived, [~~document~~] developed by the IDT using person-directed planning and, if appropriate, permanency planning. The ISP[~~, from which the IPC is derived, which~~] describes the assessments, recommendations, deliberations, conclusions, justifications and outcomes regarding the specific services provided to the individual by the program provider.

(16) - (23) (No change.)

(24) Person-directed planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of a plan for supports and services that meet the individual's personal outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(25) [~~(24)~~] Permanency Planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(26) [~~(25)~~] Permanency Planning Review Screen--A screen in CARE that, when completed by an MRA or program provider, identifies community supports needed to achieve an individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the individual.

(27) [~~(26)~~] Program provider--An entity that provides HCS Program services under a waiver program provider agreement with the department as defined in Chapter 419, Subchapter Q [~~O~~] of this title (relating to Enrollment of Medicaid Waiver Program Providers).

(28) [~~(27)~~] Service coordinator--An employee of an MRA responsible for assisting an individual or the individual's LAR on behalf of the individual in accessing medical, social, educational, and other appropriate services including HCS Program services

(29) [~~(28)~~] Service planning team--A planning team constituted by an MRA consisting of an applicant, the applicant's LAR, service coordinator, and other persons chosen by the applicant or the LAR on behalf of the applicant.

§419.155. Eligibility Criteria.

(a) An applicant or individual is eligible for HCS program services if he or she:

(1) meets the financial eligibility criteria as defined in subsection (b) of this section;

(2) meets one of the following criteria:

(A) is enrolled in the MRLA or HCS-O Program immediately prior to enrollment in the HCS Program;

(B) qualifies for the ICF/MR I level of care (LOC) as defined in §419.238 of this title (relating to Level of Care Criteria I), as determined by the department according to §419.159 of this title (relating to Level of Care Determination); and

(i) has had a determination of mental retardation performed in accordance with state law (Texas Health and Safety Code, Chapter 593, Admission and Commitment to Mental Retardation Services, Subchapter A); or

(ii) has been diagnosed by a licensed physician as having a related condition as defined in §419.203 of this title (relating to Definitions) prior to enrollment in the HCS Program; or

(C) qualifies for the ICF/MR I LOC as defined in §419.238 of this title (relating to Level of Care Criteria I) or ICF/MR VIII LOC as defined in §419.239 of this title (relating to Level of Care Criteria VIII), as determined by the department according to §419.159 of this title (relating to Level of Care Determination), and has been determined by TDMHMR or TDHS:

(i) to have mental retardation or a related condition;

(ii) to need specialized services; and

(iii) to be inappropriately placed in a Medicaid certified nursing facility based on an annual resident review conducted in accordance with the requirements of Texas Administrative Code, Title 40, §19.2500; and

~~[(2) meets the ICF/MR I level of care criteria (LOC) as determined by the department according to §419.159 of this title (relating to Level of Care (LOC) Determination);]~~

~~[(3) has had a determination of mental retardation performed in accordance with state law (Texas Health and Safety Code, Chapter 593, Admission and Commitment to Mental Retardation Services, Subchapter A) or has been diagnosed by a licensed physician as having a related condition as defined in §419.203 of this title (relating to Definitions) prior to enrollment in the HCS Program; and]~~

(3) ~~[(4)]~~ has an approved IPC for which the IPC cost does not exceed 125% of the annual ICF/MR reimbursement rate paid to a small ICF/MR, as defined in 1 TAC §355.456 (relating to Rate Setting Methodology) for the individual's level of need as it would be assigned under §419.240 of this title (relating to Level of Need) or 125% of the estimated annualized per capita cost for ICF/MR services, whichever is greater.

(b) - (c) (No change.)

§419.159. Level of Care (LOC) Determination.

(a) (No change.)

(b) The department will make an LOC determination in accordance with §419.238 of this title (relating to ICF/MR LOC I Criteria) and §419.239 of this title (relating to ICF/MR LOC VIII) based on the department's review of information reported on the applicant's or individual's MR/RC Assessment. ~~[A LOC determination will be made by the department in accordance with §419.237 of this title (relating to Level of Care).]~~

(c) - (e) (No change.)

§419.166. Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs) and Levels of Need (LONs) for Enrolled Individuals.

(a) At least annually, and prior to the expiration of an individual's IPC, the individual's IDT must review the ISP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The IDT must initiate revisions to the IPC in response to changes in the individual's personal outcomes or needs as documented in the current ISP.

(2) At minimum, the ISP must include the following:

(A) a description of the outcomes to be achieved for the individual through the HCS Program;

(B) for an individual under 22 years of age receiving supervised living or residential support, permanency planning outcomes as described in §419.174 (14) of this title (relating to Certification Principles: Service Delivery);

(C) written justification for each service component to be included in the IPC; and

(D) documentation that the type and amount of each service component included in the individual's IPC:

(i) are necessary for the individual to live in the community, to ensure the individual's health and welfare in the community, and to prevent the need for institutional services; and

(ii) do not replace existing natural supports or other non-program sources for the service components; and

(E) when the proposed IPC includes residential support, the reasons that the team concluded that supervision and assistance from awake service providers during normal sleeping hours are required to assure the individual's health and welfare including but not limited to the individual's demonstrated needs for staff intervention to respond to:

(i) the individual's medical condition;

(ii) a behavior displayed by the individual that poses a danger to the individual or to others; or

(iii) the individual's need for assistance with activities of daily living during normal sleeping hours.

~~[(2) The ISP must include documentation that the type and amount of each service component included in the individual's IPC:]~~

~~[(A) are necessary for the individual to live in the community, to ensure the individual's health and welfare in the community, and to prevent the need for institutional services;]~~

~~[(B) do not replace existing natural supports or other non-program sources for the service components; and]~~

~~[(C) when the proposed IPC includes residential support, the reasons that the team concluded that supervision and assistance from awake service providers during normal sleeping hours are required to assure the individual's health and welfare including but not limited to the individual's demonstrated needs for staff intervention to respond to:]~~

~~*[(i)* the individual's medical condition;]~~

~~*[(ii)* a behavior displayed by the individual that poses a danger to the individual or to others; or]~~

~~*[(iii)* the individual's need for assistance with activities of daily living during normal sleeping hours.]~~

(3) - (4) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303691
Rodolfo Arredondo
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 206-5232

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TITLE 34. PUBLIC FINANCE

PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 301. RULES OF THE TEXAS STATEWIDE EMERGENCY SERVICES RETIREMENT FUND

34 TAC §301.5, §301.6,

The Office of the Fire Fighters' Pension Commissioner (FFPC) proposes amendments to §301.5 and §301.6, concerning the Rules of the Texas Statewide Emergency Services Personnel Retirement Fund.

The amendment to §301.5 is proposed to subsection (b)(5). The amendment is proposed to simplify the assessment of administrative penalties for late reports and to reduce future database programming costs. The amendment to §301.6 adds a new subsection (f). The amendment is necessary to clarify that local boards of trustees are to elect board officers each year.

Morris Sandefer, Commissioner, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Sandefer also has determined that for each year of the first five-year period that the amended rules are in effect, the public benefit will be current and updated regulations. There will be no economic impact to small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the amended rules as proposed.

Comments on the proposal may be submitted to Morris Sandefer, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 6243e.3, which provide the Office of the Fire Fighters' Pension Commissioner with the authority to promulgate rules necessary for the administration of the pension fund.

No other statutes articles, or codes are affected by the proposed amendments.

§301.5. Billings and Annual Reports.

(a) Billings.

(1) Each governing body shall contribute the funds for the department's participation in the system.

(2) Although the department and governing body may have an agreement between themselves that the department will pay for participation in the system, if the department is unable to pay, the governing body is held liable for the payment.

(3) The governing body may choose yearly or twice yearly billings. It may also choose to have billings based on the governing body's fiscal year instead of a calendar year.

(4) Billings cannot be altered by the department or governing body without prior approval by the Commissioner or State Board of Trustees. Payments are deemed late if they are not received by the Commissioner within 60 days from the mailing date as indicated on the bill. Late payments accrue interest at the most recent assumed actuarial rate of return on investments of the fund. The late payment penalty formula is: ((total bill x assumed actuarial rate of return on investments)/365)x number of days payment is late.

(5) Requests for extensions of payments by the governing entity must be in writing to the Commissioner. The governing entity must demonstrate that the delay was beyond the control of the entities responsible for payment and was not the result of neglect, indifference or lack of diligence.

(b) Annual Reports.

(1) Annual report forms are mailed by the Commissioner in December of each year.

(2) Annual reports are based on a calendar year in all cases.

(3) The reports are due in the Office of the Fire Fighters' Pension Commissioner by January 31.

(4) The guidelines accompanying the report forms should be followed by the local pension board.

(5) Administrative Penalties for late departmental annual report. An annual report is deemed late if the complete report is not received in the office of the Commissioner before April 1 [~~within 60 days after January 31~~].

(A) The initial penalty is $500 (five hundred dollars) for the first violation.

(B) A penalty of $100 (one hundred dollars) will be added to the initial penalty for every 30 days the report is late.

[~~(B) Departments which habitually (2 times in 3 years) submit late reports will have an initial penalty of $1000.00 (one thousand dollars) the second time the report is late. A penalty of $100 (one hundred dollars) shall be added to the initial penalty for every 30 days the report is late.~~]

[~~(C) Every consecutive year that an annual report is submitted late, the initial penalty will be at least $500 (five hundred dollars) greater than the initial penalty assessed the previous year.~~]

(6) The Commissioner may waive penalties when a local board demonstrates that the delay in submission was beyond the control of the local entities responsible for preparing and submitting the report.

(A) Requests for waivers of the late annual report penalty must be in writing to the Commissioner.

(B) The local board must demonstrate that the delay was beyond the control of the entities responsible for preparing and submitting the report, and was not the result of neglect, indifference, or lack of diligence.

(C) If the Commissioner denies a waiver, the Commissioner must present the department's documentation to the State Board

of Trustees at its next scheduled meeting for a determination by the State Board.

(D) A local board whose waiver of the penalty is denied by the State Board of Trustees shall have 60 days from the receipt of the denial of waiver to request that the Commissioner schedule a contested case hearing with the State Office of Administrative Hearings (SOAH). The request from the local board shall be in writing.

(7) The Commissioner shall withhold an individual's pension payments when a local board cannot verify a recipient's eligibility to receive payments due to the recipient's failure to cooperate or to provide information. The chairman of the local board must make the request to withhold payments to the Commissioner in writing. The request shall outline the attempts the board has made to obtain this information. The Commissioner shall make a decision and shall notify the recipient in writing of the decision.

(8) The Commissioner shall not begin retirement annuity, disability, or death payments based on the service of a person in departments whose service information has not been updated by the latest annual report.

(9) When correcting prior years of service on an annual report for a member of the TSESRA (SB 411) system, the chairman, the current chief or head of department, and the secretary of the local board shall sign and have notarized a letter to the Commissioner correcting the service record. This letter shall be accompanied by a copy of the minutes of the local board of trustees showing that they voted to make the change.

§301.6. Local Boards of Trustees.

(a) Composition and terms of the local board are contained in Section 22, Local Board of Trustees, of Article 6243e.3, Vernons Texas Civil Statutes. The term limitations set forth in Section 22 of the TSESRA, Article 6243e.3, do not apply to the representative appointed by the governing body, and the governing body has the authority to select its representative to serve on the board in a manner that the local governing body chooses.

(b) Duties of the local board are contained in Section 23, Additional Duties of the Local Board of Trustees, and throughout the pension fund law Article 6243e and Article 6243e.3. These duties are also summarized in the information booklet issued by the Commissioner. The local board members are expected to be aware of the duties imposed on them by the law and these rules, and are legally responsible for errors and omissions made at the local level resulting in non-payment of benefits.

(c) By signing and notarizing Form LPB-411 of their department's annual report, the board members are certifying that, to the best of their knowledge, the report is correct.

(d) Meetings held by the local board of trustees shall be conducted as open meetings under the Texas Open Meetings Act, Texas Government Code Annotated, Chapter 551 as amended.

(e) In a department with five or less volunteer members all volunteer members should be on the local board.

(f) A local board of trustees annually shall elect a chairman, vice-chairman, and secretary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2003.

TRD-200303465

Morris E. Sandefer
Commissioner
Office of the Fire Fighters' Pension Commissioner
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 936-3372

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 2. MEDICALLY NEEDY AND CHILDREN AND PREGNANT WOMEN PROGRAMS

The Texas Department of Human Services (DHS) proposes to repeal §§2.1002, 2.1004, 2.1006, 2.1008, 2.1010, 2.1012, 2.1014, and 2.1016, concerning the Medically Needy Program, in its Medically Needy Program chapter; and proposes new Subchapter A, concerning definitions, §2.1; new §§2.11-2.18 in new Subchapter B, concerning Medically Needy Program requirements; and new §§2.32-2.38 in new Subchapter C, concerning Children and Pregnant Women Program requirements, in its newly titled Medically Needy and Children and Pregnant Women Programs chapter.

The purpose of the repeals and new sections is to rewrite the rules regarding the Medically Needy (MN) and Children and Pregnant Women (CPW) programs in plain language, to locate the rules for the two programs in the same chapter, and to implement decisions made during the 78th Texas legislative session. The proposal deletes the current rules in Chapter 2 for the MN Program. Rules in DHS's Chapter 4, concerning the CPW Program, are being repealed elsewhere in this issue of the *Texas Register*. They have been rewritten in plain language and combined with the MN Program rules in this chapter.

The purpose of new §§2.11(1)(A), 2.14(2), and 2.34(2)(C) is to distinguish resource limits for the MN and CPW programs from those of the Temporary Assistance for Needy Families (TANF) Program. The three programs no longer have the same resource limits, since House Bill (HB) 2292 and Senate Bill (SB) 1862, 78th Texas Legislature, reduced the TANF asset limit to $1,000. The purpose of new §2.32 is to comply with the new provisions of the Human Resources Code, §32.025 and §32.026, amended by SB 1522, SB 1862, and HB 2292, 78th Texas Legislature, which permit DHS to require personal interviews for applications and recertifications of children's Medicaid when necessary to obtain information needed for eligibility verification.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the sections.

Judy Denton, Deputy Commissioner for Family Services, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to have rules that providers, agency staff, and the public can more easily navigate and understand. Rule clarity and consistency will help providers and agency staff ensure quality services for clients and make it easier for program

applicants to locate information. In addition, the public will benefit by having rules available that reflect and implement the most recent legislative changes. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because the proposal deals with program requirements and client eligibility and does not affect the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438- 2909 in DHS's Texas Works Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-219, Texas Department of Human Services E-205, P.O.Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER A. DEFINITIONS

40 TAC §2.1

The new section is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§2.1. Definitions.

The words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise. The definitions apply to the Medically Needy (MN) and Children and Pregnant Women (CPW) programs.

(1) Applied income--A portion of a legal parent's income applied or counted to meet the needs of a minor applicant.

(2) Budget group--People living as a group at one address with needs, income, resources, and/or medical expenses in common. The Texas Department of Human Services (DHS) includes each group member in the Medicaid budget when determining eligibility, whether or not each group member is individually Medicaid eligible.

(3) CPW--The Children and Pregnant Women Program. A program DHS administers that provides Medicaid benefits to pregnant women and children.

(4) Caretaker--A person who supervises and cares for a dependent child. A caretaker must be related to the child, as required by Temporary Assistance for Needy Families (TANF) rules (detailed in Chapter 3 of this title (relating to Texas Works)).

(5) Clearinghouse--A site with staff that process medical bills submitted by MN applicants who must spend down income to qualify for Medicaid. Clearinghouse staff determine if the bills are acceptable and when spend down is met.

(6) Client--A person who is either an applicant for or a recipient of Medicaid.

(7) DHS--The Texas Department of Human Services.

(8) FPIL--Federal Poverty Income Limit. FPILs are income amounts, by family size, that represent the dividing line between families who live above or below the poverty level. The Office of Management and Budget, a federal agency, periodically calculates, updates, and publishes the FPIL.

(9) Good cause--An acceptable reason that exempts an applicant or recipient from a Medicaid requirement. For the purposes of this chapter, good cause refers to a reason for an applicant or recipient not to cooperate to obtain medical support from an absent parent or not to comply with third party resource requirements.

(10) Health and human services office--An agency other than DHS that is authorized to accept Medicaid applications.

(11) MN--The Medically Needy Program. A program DHS administers that provides Medicaid benefits to pregnant women, children, and parents or caretakers of children whose income is too high to qualify for other Medicaid programs and who have high medical expenses.

(12) Provider--A doctor, hospital, clinic, or other medical facility authorized to provide medical services and file claims for Medicaid payments.

(13) Spend down--The amount of income that an MN applicant must apply toward incurred medical bills before he can be certified for Medicaid.

(14) TANF--The Temporary Assistance for Needy Families Program.

(15) Third-party--A person or organization, other than DHS or a person living with the applicant, who may be liable as a source of payment of the applicant's medical expenses (for example, a health insurance company).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303636
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER B. MEDICALLY NEEDY PROGRAM REQUIREMENTS

40 TAC §2.11 - 2.18

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§2.11. Eligible Groups.

To qualify for Medically Needy Program benefits, applicants must be:

(1) children under age 19 or pregnant women with no child eligible for Temporary Assistance for Needy Families (TANF) who:

(A) are eligible under the resource rules described in §2.14(2) of this chapter (relating to Eligibility Requirements Other Than Income); and

(B) have countable income that is more than the Children and Pregnant Women Program income limits described in §2.31(1) and (2) of this chapter (relating to Eligible Groups); or

(2) adult caretakers of a dependent child who are eligible under TANF rules, as detailed in Chapter 3 of this title (relating to Texas Works), except that:

(A) their countable income exceeds TANF limits;

(B) their time-limited TANF benefits are exhausted;

(C) they choose Medicaid-only benefits; or

(D) they are disqualified from TANF for a reason that is not applicable to Medicaid.

§2.12. Application Procedures.

The Texas Department of Human Services (DHS) processes Medically Needy Program applications using the application rules of the Temporary Assistance for Needy Families Program, as detailed in Chapter 3 of this title (relating to Texas Works), with the following exceptions:

(1) For applicants under the age of 19, DHS:

(A) processes applications and reviews active cases by mail, telephone, or face-to-face interview;

(B) allows any office of a state health and human services agency to accept an initial application; and

(C) contracts with third parties to accept applications from hospital districts (including state- owned teaching hospitals), federally qualified health centers, and county health departments.

(2) For pregnant applicants who are potentially eligible but unable to provide proof of eligibility, DHS:

(A) postpones verifications and provides Medicaid coverage to ensure access to medical care within 30 days of application;

(B) continues the coverage of women who provide postponed verifications by the 30th day after the application date; and

(C) denies the coverage of those who fail to meet the 30-day deadline.

(3) There are no conditions limiting the designation of an authorized representative.

§2.13. Income Eligibility Requirements.

Except as noted in this section, Medically Needy Program applicants must meet the income eligibility rules for the Temporary Assistance for Needy Families Program (TANF), as detailed in Chapter 3 of this title (relating to Texas Works):

(1) TANF payments are counted as income to applicants.

(2) Applicants receive the TANF standard work-related expense deduction and dependent care deduction, but not the other TANF earned income deductions.

(3) Caretakers have the option to exclude a child's needs, income, and resources when determining eligibility of his siblings if they choose not to apply for Medicaid for that excluded child.

(4) When determining the eligibility of a pregnant Medicaid applicant or recipient, the Texas Department of Human Services includes the needs of her unborn child.

(5) The needs allowance standard for eligibility is 133-1/3% of the TANF Recognizable Needs Standard.

(6) Applicants for coverage whose net income exceeds the needs allowance standard detailed in paragraph (5) of this section may (as required by 42 Code of Federal Regulations §435.831) spend down the excess amount of income to pay unpaid medical bills and qualify for Medicaid.

§2.14. Eligibility Requirements Other Than Income.

To be eligible for the Medically Needy (MN) Program, applicants must meet the following eligibility criteria, in addition to the criteria detailed in §2.13 of this chapter (relating to Income Eligibility Requirements):

(1) Citizenship. Applicants must be citizens or aliens with approved Immigration and Naturalization Service status, as required by Temporary Assistance for Needy Families (TANF) Program rules detailed in Chapter 3, Subchapter F, of this title (relating to Citizenship). However, certain eligible aliens who were admitted to the United States on or after August 22, 1996, are eligible for Medicaid for a seven-year period following entry to the country as specified in 8 United States Code (U.S.C.) §1612(b)(2)(A)(i), instead of the five-year period of eligibility for TANF.

(2) Resources. The TANF rules for resources specified in Chapter 3 of this title (relating to Texas Works) apply, except that:

(A) applicants, if otherwise eligible, are not denied Medicaid because they transfer resources to qualify for assistance;

(B) the resource limit is $2,000, or $3,000 if the household has an aged or disabled member;

(C) for households with two certified parents, the Texas Department of Human Services (DHS) excludes up to $15,000 of the fair market value of one countable vehicle owned by the family; and

(D) DHS exempts the resources in determining eligibility for pregnant women.

(3) Age, relationship, and domicile. Applicants must meet TANF age, relationship, and domicile requirements, except:

(A) children under age 19 do not have to meet relationship and domicile requirements;

(B) pregnant women, whose only children are unborn, may be eligible;

(C) DHS includes a child in the budget group for purposes of determining eligibility for a pregnant woman only if the child is a natural or adopted child;

(D) newborn children, who remain with mothers who are Medicaid-eligible or would be eligible if pregnant, are eligible for Medicaid from the day of birth through the last day of the month they become one year old; and

(E) newborn children who are in the process of being adopted are eligible through the month their mothers give up parental rights.

(4) Child/medical support requirements. TANF rules in Chapter 3 of this title that require applicants to cooperate in obtaining child or medical support from absent parents apply to the MN Program as follows:

(A) Pregnant women must provide the names and last known addresses of the legal and/or biological fathers of unborn children.

(B) Households applying only for a child under age 19 are not required to cooperate to find absent parents to obtain child or medical support. However, caretakers of eligible children qualify for Medicaid coverage for themselves only if they:

(i) cooperate in obtaining medical support from the certified child's absent parent, if the child is deprived of parental support due to absence, as provided by the Social Security Act, §1912(a)(1) (42 U.S.C. §1396k(a)(1)); or

(ii) have good cause not to cooperate (as defined by TANF rules in Chapter 3 of this title).

(5) School attendance. Applicants are exempt from TANF school attendance requirements.

(6) Social Security Number (SSN). Applicants must provide or apply for an SSN (including children referred to the Children's Health Insurance Program (CHIP)), except that DHS:

(A) does not require an SSN for newborns until the earlier of six months after birth or when DHS reviews Medicaid eligibility;

(B) refers a Medicaid-eligible mother directly to the Social Security Office to obtain an SSN for her newborn, if her newborn was certified for Medicaid as a result of a notice from an authorized medical provider (for example, a hospital or clinic); and

(C) requests, but does not require, budget group members who are not eligible for Medicaid to provide or apply for an SSN.

(7) Newborn children. Except for the requirements detailed in paragraphs (1), (3)(D), (3)(E), and (6)(A) of this section, newborn applicants are exempt from all requirements of this section.

(8) Third-party resources. Applicants and recipients must comply with third-party resources requirements, as detailed in the Human Resources Code, §32.033.

§2.15. Medicaid Eligibility Dates.

The Texas Department of Human Services (DHS) determines Medicaid eligibility dates for Medically Needy Program applicants as provided in this section.

(1) Medicaid coverage begins on the earliest day of the application month on which the applicant met all eligibility criteria.

(2) Retroactive Medicaid coverage may begin as early as three months before the application month, except that:

(A) a pregnant woman's coverage begins no earlier than the first day of the month in which the pregnancy began (coverage ends the second month after the month in which the pregnancy terminates); and

(B) a newborn's coverage begins no earlier than the child's date of birth (coverage ends the month of the first birthday, the month his mother's Medicaid ends, or the month he is no longer living with his mother, whichever is earliest).

(3) The Medicaid coverage of applicants with a spend down amount, as specified in §2.13(6) of this title (relating to Income Eligibility Requirements), begins on the earliest day of the month of potential eligibility on which spend down requirements are met.

§2.16. Information from Other Agencies.

(a) Periodically, the Texas Department of Human Services (DHS) and other state and federal agencies compare the information they have stored on computer files.

(b) After comparing information with another agency, DHS contacts the Medicaid recipient if the information does not match, so that DHS can confirm the correct information.

(1) If the mismatch of information does not affect eligibility, DHS will not take action to adjust or deny Medicaid.

(2) If the mismatch of information affects eligibility, DHS takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the client.

§2.17. Requirement to Report Changes.

(a) Medically Needy Program recipients must report changes as required by Temporary Assistance for Needy Families (TANF) Program rules, and within the time frames specified by TANF rules as outlined in Chapter 3 of this title (relating to Texas Works).

(b) In addition to the reporting required by the TANF Program rules, an MN recipient who is pregnant must report the termination of pregnancy.

§2.18. Right to Appeal.

(a) Medically Needy Program applicants and recipients have the right to appeal Texas Department of Human Services (DHS) decisions. Appeals are governed by DHS's fair hearing rules contained in Chapter 79 of this title (relating to Legal Services).

(b) DHS provides an action notice regarding a DHS decision to Medicaid applicants and recipients. The action notice includes information about how to file an appeal and the availability of free legal representation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303640
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER C. CHILDREN AND PREGNANT WOMEN PROGRAM REQUIREMENTS

40 TAC §§2.32 - 2.38

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§2.32. Application Procedures.

(a) The Texas Department of Human Services (DHS) processes Children and Pregnant Women Program applications using the application rules of the Temporary Assistance for Needy Families (TANF) Program, as detailed in Chapter 3 of this title (relating to Texas Works), with the following exceptions:

(1) For applicants under the age of 19, DHS:

(A) processes applications and reviews active cases by mail, telephone, or face-to-face interview;

(B) may conduct a personal interview with an initial applicant if DHS has received conflicting information related to household membership, income, or assets that affect eligibility and the information cannot be verified through other means;

(C) conducts a personal interview for recertification of Medicaid eligibility when there is no associated case record for TANF or food stamps or adult Medicaid coverage, and DHS has received conflicting information related to household membership, income, or assets that affects eligibility and the information cannot be verified through other means;

(D) allows any office of a state health and human services agency to accept an initial application; and

(E) contracts with third parties to accept applications from hospital districts (including state- owned teaching hospitals), federally qualified health centers, and county health departments.

(2) For pregnant applicants who are potentially eligible but unable to provide proof of eligibility, DHS:

(A) postpones verifications and provides Medicaid coverage to ensure access to medical care within 30 days of application;

(B) continues the coverage of women who provide postponed verifications by the 30th day after the application date; and

(C) denies the coverage of those who fail to meet the 30-day deadline.

(3) There are no conditions limiting the designation of an authorized representative.

(b) Parents or guardians of Medicaid children under the age of 19 must:

(1) attend a DHS health care orientation;

(2) accompany the child on a visit to a health care provider; or

(3) meet with a DHS representative to discuss the child's eligibility and, as appropriate, receive counseling on the child's need for comprehensive health care.

(c) Parents or guardians of Medicaid children under the age of 19 who are eligible for the Texas Health Steps Program must:

(1) comply with the Texas Health Steps regimen of health care requirements, as required by the Texas Department of Health in 25 TAC Chapter 33, Subchapter J (relating to Texas Health Steps Medical Case Management); or

(2) meet with a DHS representative to discuss the child's eligibility and, as appropriate, receive counseling on the child's need for comprehensive health care.

(d) The services and policies in subsection (b) of this section and §2.35(3) and (4) of this chapter (relating to Medicaid Eligibility Dates) are administered according to the procedures in DHS's Medicaid simplification operating guidelines. The guidelines are published, available to the public, and are updated regularly to reflect procedural changes.

§2.33. Income Eligibility Requirements.

Children and Pregnant Women Program applicants must meet the income eligibility rules under the Temporary Assistance for Needy Families (TANF) Program, as detailed in Chapter 3 of this title (relating to Texas Works), except as follows:

(1) TANF payments are counted as income to applicants.

(2) Applicants receive the TANF standard work-related expense deduction and dependent care deduction, but not the other TANF earned income deductions.

(3) Caretakers have the option to exclude a child's needs, income, and resources when determining eligibility of his siblings if they choose not to apply for Medicaid for that excluded child.

(4) When determining the eligibility of a pregnant Medicaid applicant or recipient, DHS includes the needs of her unborn child.

(5) The income limits for pregnant women, children under age one, and children ages one through 18 are based on a percentage of the Federal Poverty Income Limit (FPIL), as required by §2.31(1) and (2) of this chapter (relating to Eligible Groups).

(6) DHS does not require newborn applicants, as defined in §2.31(3) of this chapter, to meet income eligibility requirements.

(7) Increased income does not cause the denial of ongoing Medicaid eligibility of a pregnant woman.

(8) DHS does not count the applied income of stepparents or grandparents with whom the child lives, as specified in 42 Code of Federal Regulations, §435.113.

§2.34. Eligibility Requirements Other Than Income.

To be eligible for the Children and Pregnant Women Program (CPW), applicants must meet the following eligibility criteria, in addition to the criteria detailed in §2.33 of this title (relating to Income Eligibility Requirements):

(1) Citizenship. Applicants must be citizens or aliens with approved Immigration and Naturalization Service status, as required by Temporary Assistance for Needy Families (TANF) rules in Chapter 3, Subchapter F, of this title (relating to Citizenship). However, certain eligible aliens who were admitted to the United States on or after August 22, 1996, are eligible for Medicaid for a seven-year period following entry to the country as specified in 8 United States Code §1612(b)(2)(A)(i), instead of the five-year period of eligibility for TANF.

(2) Resources. The TANF rules for resources specified in Chapter 3 of this title (relating to Texas Works) apply, except that:

(A) applicants, if otherwise eligible, are not denied Medicaid because they transfer resources to qualify for assistance;

(B) the Texas Department of Human Services (DHS) uses Food Stamp Program rules in Chapter 3, Subchapter G, of this title (relating to Resources) for vehicles, except that DHS exempts the value of a family's primary vehicle if the applicant is a child under age 19;

(C) the resource limit for children under age 19 is $2,000, or $3,000 if the household has an aged or disabled member; and

(D) DHS exempts resources in determining eligibility for pregnant women.

(3) Age, relationship, and domicile. Applicants must meet TANF age, relationship, and domicile requirements, except:

(A) Children under age 19 do not have to meet relationship and domicile requirements.

(B) Pregnant women, whose only children are unborn, may be eligible.

(C) DHS includes a child in the budget group for purposes of determining eligibility for a pregnant woman only if the child is a natural or adopted child.

(D) Newborn children, who remain with mothers who are Medicaid-eligible or would be if pregnant, are eligible for Medicaid from the day of birth through the last day of the month they become one year old.

(E) Newborn children who are in the process of being adopted are eligible through the month their mothers give up parental rights.

(4) Child/medical support requirements. TANF rules in Chapter 3 of this title that require applicants to cooperate in obtaining child or medical support from absent parents apply to the CPW Program as follows:

(A) Pregnant women must provide the names and last known addresses of the legal and/or biological fathers of unborn children.

(B) Households applying only for a child under age 19 are not required to cooperate to find absent parents to obtain child or medical support.

(5) School attendance. Applicants are exempt from TANF school attendance requirements.

(6) Social Security Number (SSN). Applicants must provide or apply for an SSN (including children referred to the Children's Health Insurance Program (CHIP)), except that DHS:

(A) does not require an SSN for newborns until the earlier of six months after birth or when DHS reviews Medicaid eligibility;

(B) refers a Medicaid-eligible mother directly to the Social Security Office to obtain an SSN for her newborn, if her newborn was certified for Medicaid as a result of a notice from an authorized medical provider (for example, a hospital or clinic); and

(C) requests, but does not require, budget group members who are not eligible for Medicaid to provide or apply for an SSN.

(7) Newborn children. Except for the requirements detailed in paragraphs (1), (3)(D), (3)(E), and (6)(A) of this section, newborn applicants are exempt from all requirements of this section.

(8) Third-party resources. Applicants and recipients must comply with third-party resources requirements, as detailed in the Human Resources Code, §32.033.

§2.35. Medicaid Eligibility Dates.

The Texas Department of Human Services (DHS) determines Medicaid eligibility dates for Children and Pregnant Women Program applicants as follows:

(1) Medicaid coverage begins on the earliest day of the application month on which the applicant met all eligibility criteria.

(2) Retroactive Medicaid coverage may begin as early as three months before the application month, except that:

(A) a pregnant woman's coverage begins no earlier than the first day of the month in which the pregnancy began (coverage ends the second month after the month in which the pregnancy terminates); and

(B) a newborn's coverage begins no earlier than the child's date of birth (coverage ends the month of the first birthday, the month his mother's Medicaid ends, or the month he is no longer living with his mother, whichever is earliest).

(3) Recipients who return complete review documents continue to receive ongoing Medicaid coverage.

(4) DHS does not review or change the Medicaid eligibility of a child under the age of 19 whose coverage began on or after January 1, 2002, regardless of changes in resources or income, until the earlier of:

(A) the first 180 days after the date he was certified; or

(B) his 19th birthday.

§2.36. Information from Other Agencies.

(a) Periodically, the Texas Department of Human Services (DHS) and other state and federal agencies compare the information they have stored on computer files.

(b) After comparing information with another agency, DHS contacts the Medicaid recipient if the information does not match so that DHS can confirm the correct information.

(1) If the mismatch of information does not affect eligibility, DHS does not take action to adjust or deny Medicaid.

(2) If the mismatch of information affects eligibility, DHS takes appropriate action to adjust or deny Medicaid and will send a written notice of action taken to the client.

§2.37. Requirement to Report Changes.

(a) Children and Pregnant Women Program (CPW) recipients must report changes as required by Temporary Assistance for Needy Families (TANF) Program rules, and within the time frames specified by TANF rules as outlined in Chapter 3 of this title (relating to Texas Works).

(b) In addition to the reporting required by TANF Program rules, a recipient of the CPW Medicaid Program who is:

(1) pregnant must report the termination of pregnancy; and

(2) under age 19 must report changes, even though the child is continuously eligible, regardless of reported income and resource changes, until Medicaid eligibility is reviewed.

§2.38. Right to Appeal.

(a) Children and Pregnant Women Program applicants and recipients have the right to appeal Texas Department of Human Services (DHS) decisions. Appeals are governed by DHS's fair hearing rules contained in Chapter 79 of this title (relating to Legal Services).

(b) DHS provides an action notice regarding a DHS decision to Medicaid applicants and recipients. The action notice includes information about how to file an appeal and the availability of free legal representation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Department of Human Services
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For further information, please call: (512) 438-3734

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CHAPTER 2. MEDICALLY NEEDY PROGRAM SUBCHAPTER A. PROGRAM REQUIREMENTS

40 TAC §§2.1002, 2.1004, 2.1006, 2.1008, 2.1010, 2.1012, 2.1014, 2.1016

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001-22.038 and §§32.001- 32.053.

§2.1002. Application Procedures.

§2.1004. Eligible Groups.

§2.1006. Requirements for Application.

§2.1008. Definitions.

§2.1010. Determining Income Eligibility.

§2.1012. Medicaid Eligibility.

§2.1014. Right to Appeal.

§2.1016. Client Reporting Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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CHAPTER 2. MEDICALLY NEEDY AND CHILDREN AND PREGNANT WOMEN PROGRAMS SUBCHAPTER B. MEDICALLY NEEDY PROGRAM REQUIREMENTS

40 TAC §2.19

The Texas Department of Human Services (DHS) proposes new §2.19, concerning availability of funding, in its Medically Needy and Children and Pregnant Women Programs chapter.

The purpose of the new section is to implement decisions made by the 78th Texas Legislature. Although the legislature did not appropriate funds for the Medically Needy (MN) Program, it did authorize DHS to administer the MN Program contingent on the availability of appropriated funds. This provision was made in House Bill 2292 and Senate Bill 1862, which amended the Human Resources Code, §32.024(i). Therefore, §2.19 is proposed to make it clear that operation of the MN Program depends on funds being appropriated for the program and to allow DHS to administer the MN Program if appropriated funds become available.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section.

Judy Denton, Deputy Commissioner for Family Services, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that a rule will be in place to serve clients who are eligible for the Medically Needy Program in the event that appropriated funds become available. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the proposal deals with a program requirement and does not affect the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438- 2909 in DHS's Texas Works Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-219, Texas Department of Human Services E-205, P.O.Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

The new section is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§2.19. Availability of Funding.

The Medically Needy Program is subject to the availability of appropriated funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. CHILDREN AND PREGNANT WOMEN PROGRAM REQUIREMENTS

40 TAC §2.31, §2.39

The Texas Department of Human Services (DHS) proposes new §2.31, concerning eligible groups, and §2.39, concerning availability of funding, in its Medically Needy and Children and Pregnant Women Programs chapter.

The purpose of new §2.31 is to rewrite the rule regarding eligible groups in the Children and Pregnant Women (CPW) Program in plain language. The purpose of new §2.31(1) and §2.39 is to stay within the appropriated funding levels for the CPW Program in House Bill 1, which are based on lowering the income limit for pregnant women ages 19 and over to 158% of the Federal Poverty Income Limit.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are fiscal implications for state government as a result of enforcing or administering the sections. There are no fiscal implications for local government as a result of administering the sections.

The effect on state government for the first five-year period the sections are in effect is an estimated additional cost of $36,176 in fiscal year (FY) 2004; and an estimated reduction in cost of $21,391,369 in FY 2004; $22,508,631 in FY 2005; $23,707,488 in FY 2006; $24,987,363 in FY 2007; and $26,356,039 in FY 2008.

Judy Denton, Deputy Commissioner for Family Services, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to have rules that providers, agency staff, and the public can more easily navigate and understand. Rule clarity and consistency will help providers and agency staff ensure quality services for clients and make it easier for program applicants to locate information. In addition, the public will benefit by having rules available that reflect and implement the most recent legislative changes. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because the proposal deals with program requirements and client eligibility and does not affect the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, but persons who are ineligible for Medicaid as a result of this change may be adversely affected. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438- 2909 in DHS's Texas Works Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-219, Texas Department of Human Services E-205, P.O.Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§2.31. Eligible Groups.

To qualify for Children and Pregnant Women Program benefits, applicants must be:

(1) pregnant women age 19 and over with countable income less than 158% of the Federal Poverty Income Limit (FPIL);

(2) pregnant women under age 19 or children under age one with countable income less than 185% of the FPIL;

(3) children ages one to five with countable income less than 133% of the FPIL;

(4) children ages six to 18 with countable income less than 100% of the FPIL;

(5) newborn children who live with their legal mothers who were Medicaid recipients when the children were born. These children may receive Medicaid benefits through the month they are one year old as long as they live with their mother in Texas;

(6) newborn children born to mothers incarcerated in a Texas criminal justice facility. These children may be covered from the day of birth if they leave the facility and live with eligible caretaker relatives who file applications. If no caretaker relative applies for coverage for a newborn born to an incarcerated mother, funds to pay for the newborn's medical expenses from birth until the newborn leaves the facility may be available from the Texas Medical Assistance Program, as provided by the Human Resource Code, §80.003; or

(7) children who would be TANF-eligible except for the applied income of their stepparent or their grandparents with whom they live.

§2.39. Availability of Funding.

Pregnant women ages 19 and over may be eligible at an income level up to 185% of the Federal Poverty Income Limit if appropriated funds are available.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 3. TEXAS WORKS

The Texas Department of Human Services (DHS) proposes to amend §3.301, concerning responsibilities of clients and Texas Department of Human Services (DHS); §3.1104, concerning failure to comply with Title IV-A Employment Program; §3.1105, concerning reestablishing eligibility; §3.1801, concerning Temporary Assistance for Needy Families (TANF) child support requirements; and §3.7609, concerning failure to comply with CHOICES Program, in its Texas Works chapter.

The purpose of these rule amendments is to implement the changes in law made by sections 2.86-2.88 of House Bill (HB) 2292, passed by the 78th Legislature.

HB 2292, section 2.86, amended the Human Resources Code, §31.0031, to require that a TANF payee sign an agreement that defines the responsibilities of the state and the payee. This amendment defines a TANF payee as a person who resides in a household with a dependent child and who is within the degree of relationship with the child that is required of a caretaker, but whose needs are not included in DHS's determination of the amount of TANF benefits provided to the household. The amendment provides that DHS must require TANF payees to sign an agreement that contains the following five requirements:

(1) A parent of a dependent child must cooperate with DHS and the Title IV-D agency if necessary to establish the paternity of the dependent child and to establish or enforce child support.

(2) If adequate and accessible providers of the services are available in the geographic area and subject to the availability of funds, each dependent child, as appropriate, must complete early and periodic screening, diagnosis, and treatment checkups on schedule and receive the immunization series prescribed by Health and Safety Code, §161.004, unless the child is exempt under that section.

(3) Each caretaker relative or parent receiving assistance must not use, sell, or possess marijuana or a controlled substance in violation of Health and Safety Code, Chapter 481, or abuse alcohol.

(4) Each dependent child younger than 18 years of age or teen parent younger than 19 years of age must attend school regularly, unless the child has a high school diploma or high school equivalency certificate or is specifically exempted from school attendance under §25.086 of the Education Code.

(5) Each recipient must comply with DHS rules regarding proof of school attendance.

HB 2292, section 2.87, amended the Human Resources Code, §31.0031, to require DHS to adopt rules governing sanctions and penalties against the family of a person who fails to cooperate with a requirement in the Human Resources Code, §31.0031(d), that is contained in a responsibility agreement signed by the person.

HB 2292, section 2.88, amended the Human Resources Code, §§31.0032-31.0034, which changed the sanctions imposed for failure to cooperate with a requirement in the Human Resources Code, §31.0031(d), that is contained in a responsibility agreement. These amendments require DHS to immediately apply a sanction terminating the total amount of financial assistance provided to or for the person and person's family, as more fully set out in Human Resources Code, Chapter 31, as amended.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are fiscal implications for state government as a result of enforcing or administering the sections. There are no fiscal implications for local governments as a result of enforcing or administering the sections.

The effect on state government for the first five-year period the sections are in effect is an estimated additional cost of $556,303 in fiscal year (FY) 2004; and an estimated reduction in cost of $941,000 in FY 2004; $1.5 million in FY 2005; $662,552 in FY 2006; $713,345 in FY 2007; and $758,745 in FY 2008.

Judy Denton, Deputy Commissioner for Family Services, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is a cost savings to the state and that DHS rules will be in compliance with amendments made by the 78th Legislature to the Human Resources Code, Chapter 31. There is no adverse economic effect on small or micro businesses, or on businesses of any size, as a result of enforcing or administering the sections, because the sections concern client eligibility and the application process and do not affect the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. However, persons who do not comply with a responsibility agreement, and their families, may be adversely affected. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438- 2909 in DHS's Texas Works Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-260, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER C. THE APPLICATION PROCESS

40 TAC §3.301

The amendment is proposed under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The amendment affects the Human Resources Code, §§31.001-31.081.

§3.301. Responsibilities of Clients and the Texas Department of Human Services (DHS).

(a)-(c) (No change.)

(d) Additional state and client responsibilities are explained by eligibility staff to households as a condition of TANF eligibility in Texas as specified in paragraphs (1)-(5) of this subsection.

(1) Requirements.

(A) (No change.)

(B) Client requirements. DHS requires each adult TANF recipient, each minor parent applying as a caretaker or second parent, and each payee [~~including minor parents applying as a caretaker/second parent~~], as a condition of eligibility, to sign a [~~personal~~] responsibility agreement as specified in Human Resources

Code, §31.0031[~~(a)~~]. [~~Unless exempted by Human Resources Code, §31.0031(f), regarding unavailability of funding for support services,~~] DHS requires household members to comply with any applicable requirements contained in the agreement and listed in Human Resources Code, §31.0031(d), after the agreement has been signed [~~by an adult recipient,~~] or the household is subject to a penalty as described in paragraph (4) of this subsection. [~~Additionally, the requirements and penalties related to immunizations specified in Human Resources Code, §31.0031(d)(2), apply to cases in which the adult caretaker relative is not a certified recipient.~~] For the parenting skills training specified in Human Resources Code, §31.0031(d)(8), DHS requires participation by certified caretakers and second parents of a certified child under age five and teen parents. Others may voluntarily participate.

(2) Establishing compliance. Compliance with a responsibility agreement that contains any one or more of the requirements listed in Human Resources Code, §31.0031(d), is established in the following manner:

(A) Recipients and payees must provide proof of compliance with provisions in Human Resources Code, §31.0031(d)(2), (6), and (7), at each periodic review. DHS accepts the following as proof of compliance:

(i)-(ii) (No change.)

(B) [~~(iii)~~] Human Resources Code, §31.0031(d)(8). DHS accepts written or verbal proof of training completion from the person or organization that provided training.

(C) [~~(B)~~] Recipients are considered to be in compliance related to the sections of the Human Resource Code described in clauses (i)-(ii)[~~(iv)~~] of this subparagraph, unless noncompliance is determined.

(i) Human Resources Code, §31.0031(d)(4), unless noncompliance is determined pursuant to §3.1104 of this title (relating to Failure to Comply with Title IV-A Employment Program); or

(ii) Human Resources Code, §31.0031(d)(3), unless DHS verifies the recipient voluntarily quit a job;

(D) Recipients and payees are considered to be in compliance related to the sections of the Human Resource Code described in clauses (i)-(ii) of this subparagraph, unless noncompliance is determined.

(i) [~~(iii)~~] Human Resources Code, §31.0031(d)(5), unless DHS determines the recipient or payee, as applicable, has, since signing the [~~Personal Responsibility Agreement~~] responsibility agreement, committed and either been convicted of [~~,~~] or received [~~has~~] a deferred adjudication for

(I) using, selling, or possessing marijuana or any other controlled substance in violation of Health and Safety Code, Chapter 481, or

(II) the abuse of alcohol; or

(ii) [~~(iv)~~] Human Resources Code, §31.0031(d)(1), unless noncompliance is determined pursuant to §3.1801 of this title (relating to Temporary Assistance for Needy Families (TANF) Child Support Requirements).

(3) Failure to sign the responsibility agreement. If a member of the household who is required to sign the responsibility agreement fails or refuses to sign, the application or case for the entire TANF household is denied.

(4) Penalties for noncooperation [~~noncompliance~~] with requirements of a responsibility agreement. Failure to cooperate [~~comply~~] results in the penalties specified in subparagraphs (A)-(D) of this paragraph.

(A) A recipient or payee who fails to cooperate loses eligibility for TANF cash assistance for the recipient or payee and their family for one month or until the person demonstrates cooperation with the requirement of the responsibility agreement for which the penalty was imposed, whichever is longer. [~~Penalty amounts for noncompliance with Human Resources Code, §31.003(d), are referenced in §3.1801 of this title (relating to Temporary Assistance for Needy Families (TANF) Child Support Requirements). Penalty amounts for noncompliance with Human Resources Code, §31.0031(d)(4), result in a financial penalty of the grant amount equal to the recognizable needs figure of:~~]

~~[(i)~~ ~~a single parent if one adult fails to comply; or~~]

~~[(ii)~~ ~~a caretaker and second parent if two adults are subject to a noncompliance penalty in the same month.~~]

(B) A recipient or payee who fails to cooperate for two consecutive months becomes ineligible for TANF cash assistance for the recipient or payee and family [~~Penalty amounts for noncompliance with each of the remaining requirements specified in Human Resources Code, §31.0031(d). Noncompliance results in a monthly financial penalty of $25 for each separate determination of noncompliance until the penalty has ended, subject to the caps specified in subparagraph (C) of this paragraph~~].

(C) A family denied for noncooperation may reapply for TANF cash assistance but must cooperate with any applicable requirements of a responsibility agreement for one month before receiving cash assistance. This month of cooperation does not count toward the 45-day time frame DHS allows for processing applications [~~Penalty caps. The maximum penalty is $75 when three or more penalties as described in subparagraph (B) of this paragraph apply for the same month. If penalties pursuant to subparagraphs (A) and (B) of this paragraph are applicable for the same month, DHS applies only the penalty or penalties pursuant to subparagraph (A) of this paragraph~~].

(D) Penalty periods. DHS starts penalty periods beginning with the earliest month benefits can be adjusted. [~~The penalty for noncompliance with Human Resources Code, §31.0031(d)(4), is imposed for the time period specified in §3.1104 and §3.1105 of this title (relating to Failure to Comply with Title IV-A Employment Program and Reestablishing Eligibility). The penalty for noncompliance with Human Resources Code, §31.0031(d)(3), is imposed for three consecutive months, or fewer than three months, if the recipient returns to that job or another comparable job, according to the regulations applicable to the Food Stamp Program, as specified in 7 Code of Federal Regulation §273.7(n)(5)(ii), relating to voluntary quit. The penalty for noncompliance with Human Resources Code, §31.0031(d)(5), is imposed for six consecutive months. The penalties for noncompliance with requirements specified in Human Resources Code, §31.0031(d)(1), (2), (6), (7), and (8), remain in effect until the month after the noncompliance ends.~~] DHS considers noncompliance with these requirements to have ended as specified in:

(i) (No change.)

(ii) Human Resources Code, §31.0031(d)(2). Medical screening for the child is completed, treatments are completed, or the recipient or payee, as applicable, has shown good faith effort because treatments are initiated by the medical provider. Immunizations are current or the recipient has shown good faith effort because an immunization schedule is established by the medical provider.

(iii) Human Resources Code, §31.0031(d)(6) and (7). The recipient or payee, as applicable, has shown a good faith effort because he or she provides verification from the school that the required student has attended school without an unexcused absence (as determined by the school) for one calendar month.

(iv) Human Resources Code, §31.0031(d)(8). For recipients participating in the Choices program, the case manager monitors and ensures the client participates and completes the parenting skills program. The case manager determines compliance. The DHS eligibility worker monitors participation and completion of parenting skills for non-Choices clients.

~~[(E) Delayed penalties. If a particular penalty cannot be imposed initially due to the penalty cap explained in subparagraph (C) of this paragraph, it will be imposed later during the penalty period if the removal of another penalty makes it possible to do so without exceeding the penalty cap. For purposes of counting months of penalty pursuant to Human Resources Code, §31.0031(d)(3) and (5), a month in which a penalty is applicable counts even if the penalty cannot be imposed because of the penalty cap specified in subparagraph (C) of this paragraph.]~~

(5) Good cause. Good cause for noncompliance as specified in Human Resources Code, §31.0033, is established for the requirements listed in Human Resources Code, §31.0031(d), as explained in the following subparagraphs.

(A) (No change.)

(B) Human Resources Code, §31.0031(d)(2). Good cause regarding immunizations is established if the child is [~~for recipients who are~~] exempt under the provisions in Health and Safety Code, §161.004(d) [~~, regarding immunizations~~].

(C)-(I) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. EMPLOYMENT SERVICES

40 TAC §3.1104, §3.1105

The amendments are proposed under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The amendments affect the Human Resources Code, §§31.001-31.081.

§3.1104. Failure to Cooperate [~~Comply~~] with Title IV-A Employment Program.

~~[(a) A Temporary Assistance for Needy Families (TANF) client who is certified for TANF as the caretaker or second parent and who does not comply with the Title IV-A Employment Program requirements and cannot establish good cause is sanctioned using one or more of the circumstances specified in paragraphs (1)-(3) of this subsection:]~~

~~[(1) for the first such failure to comply, at lease one month or until the failure to comply ceases, whichever is longer;]~~

~~[(2) for the second such failure to comply, three months or until the failure to comply ceases, whichever is longer; and]~~

~~[(3) for the third such failure to comply, six months or until the failure to comply ceases, whichever is longer.]~~

~~[(b) During the sanction period, the individual will be sanctioned by not taking into account the needs of the individual (including a dependent child who noncomplies) in determining the family's need for assistance and the amount of the assistance payment.]~~

~~[(c) If the individual is a parent or other caretaker relative, payments for the remaining members of the assistance unit will be in the form of protective or vendor payments. If the state is unable to locate an appropriate individual to whom the protective payments can be made, the state may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.]~~

[~~(d)~~] Penalties for noncooperation [~~other recipients~~] are described in §3.301(d)(4) of this title (relating to Responsibilities of Clients and the Texas Department of Human Services (DHS)). [~~The penalty periods are the same as those described in subsection (a) of this section.~~]

§3.1105. Reestablishing Eligibility.

(a) A household denied for continuous failure to cooperate and who remains subject to the Temporary Assistance for Needy Families (TANF) work participation requirement can reestablish eligibility as explained in §3.301(d) of this title (relating to Responsibilities of Clients and the Texas Department of Human Services (DHS)). [~~A client sanctioned for noncompliance as specified in 45 Code of Federal Regulations §250.34(a) may reestablish eligibility:~~]

~~[(1) as stipulated in 45 Code of Federal Regulations §250.34(b) without having to participate for a trial period, or]~~

~~[(2) by making application, without agreeing to comply, if the client moves to a county in which the Texas Department of Human Services (DHS) does not operate a Job Opportunities and Basic Skills (JOBS) Program or otherwise becomes exempt from JOBS participation.]~~

(b) A household denied for noncooperation as explained in §3.301(d) of this title who does not remain subject to the TANF work participation requirement may reestablish eligibility by making application, signing the responsibility agreement, and meeting other eligibility requirements [~~Under the circumstances specified in subsection (a) (2) of this section, a client under sanction for a second or subsequent noncompliance can apply to reestablish eligibility only after the minimum penalty period described in 45 Code of Federal Regulations §250.34(a) has ended~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER R. CHILD SUPPORT

40 TAC §3.1801

The amendment is proposed under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The amendment affects the Human Resources Code, §§31.001-31.081.

§3.1801. Temporary Assistance for Needy Families (TANF) Child Support Requirements.

(a)-(b) (No change.)

(c) Penalties and procedures related to noncooperation are explained [~~In regard to recipients subject to the requirements specified~~] in §3.301(d) of this title (relating to Responsibilities of Clients and the Texas Department of Human Services (DHS)) [~~, DHS applies noncompliance penalties pursuant to 45 Code of Federal Regulations §264.30(c)(1)~~].

[~~(1) For households of five or less, noncompliance results in a financial penalty of the grant amount equal to the recognizable needs figure of:~~]

[~~(A) a single parent if one adult fails to comply; or~~]

[~~(B) a caretaker and second parent if two adults are subject to a noncompliance penalty in the same month.~~]

[~~(2) For households with six to ten members, noncompliance results in a penalty of $125.~~]

[~~(3) For households greater than ten, noncompliance results in a penalty of $165.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER WW. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES-STATE PROGRAM

40 TAC §3.7609

The amendment is proposed under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The amendment affects the Human Resources Code, §§31.001-31.081.

§3.7609. Failure to Comply with Choices [~~CHOICES~~] Program.

[~~(a) Clients who do not comply with a CHOICES requirement and cannot establish good cause are sanctioned.~~]

[~~(1) TANF-SP clients who are members of the State Welfare Reform Control Group as described in 3.6001 of this title (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code 31.0031, Relating to the Personal Responsibility Agreement) and who do not comply with a CHOICES requirement, and who cannot establish good cause are sanctioned as stated in 45 Code of Federal Regulations, §250.34(a)(1) and §250.34(c)(2).~~]

(a) [~~(2) All other~~] TANF-SP clients who do not cooperate [~~comply~~] with a Choices [~~CHOICES~~] requirement and cannot establish good cause are penalized [~~sanctioned~~] as explained [~~specified~~] in §3.301(d)(4) [~~3.301(d)(5)~~] of this title (relating to Responsibility of Clients and the Texas Department of Human Services (DHS)).

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. RESOURCES

40 TAC §3.703

The Texas Department of Human Services (DHS) proposes to amend §3.703, concerning limits, in its Texas Works chapter. The purpose of the amendment is to implement Senate Bill 1862, section 5, and House Bill 2292, section 2.201, each passed by the 78th Texas Legislature, and both of which amended the Human Resources Code, §31.032(d), requiring DHS to reduce the current Temporary Assistance for Needy Families (TANF) resource limit of $2,000, or $3,000 if the household contains an elderly or disabled member, to $1,000. The rule is amended to refer only to that portion of the Human Resources Code that reflects the lower resource limit.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local government as a result of enforcing or administering the section.

The effect on state government for the first five-year period the section is in effect is an estimated additional cost of $24,087 in fiscal year (FY) 2004; $0 in FY 2005; $0 in FY 2006; $0 in FY 2007; and $0 in FY 2008.

In addition, the effect on state government for the first five-year period the section is in effect is an estimated reduction in cost of $648,829 in fiscal year (FY) 2004; $1,333,279 in FY 2005; $1,452,913 in FY 2006; $1,584,653 in FY 2007; and $1,729,888 in FY 2008.

Judy Denton, Deputy Commissioner for Family Services, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing

the section is that the TANF Program will be able to continue to serve eligible clients while conforming to the resource limits set by the 78th Texas Legislature. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the proposal does not impose any additional requirements for medical providers. There is no anticipated economic cost to persons who are required to comply with the proposed section, but persons who are ineligible for TANF benefits as a result of this change may be adversely affected. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438- 2909 in DHS's Texas Works Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-253, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.081.

§3.703. Limits.

(a) Temporary Assistance for Needy Families (TANF). The resource limits are those specified by Human Resources Code, §31.032(d)(1)[~~and §31.032(e)~~].

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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40 TAC §3.704

The Texas Department of Human Services (DHS) proposes to amend §3.704, concerning types of resources, in its Texas Works chapter. The purpose of the amendment is to implement Rider 34 to the 78th Texas Legislature's appropriations to DHS, contained in House Bill 1, which instructs DHS to determine a vehicle value limit amount in determining eligibility for services that is within available appropriations and that will provide adequate, dependable transportation for clients. This proposal does not modify the current eligibility determination for Temporary Assistance for Needy Families (TANF) clients, because it does not change the current resource limit amount for vehicles of such clients. However, this proposal does modify the current eligibility determination for TANF-State Program clients, because it reduces the resource limit for the first countable vehicle of such clients from $15,000 to $4,650.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local government as a result of enforcing or administering the section.

The effect on state government for the first five-year period the section is in effect is an estimated additional cost of $24,560 in fiscal year (FY) 2004; $0 in FY 2005; $0 in FY 2006; $0 in FY 2007; and $0 in FY 2008.

In addition, the effect on state government for the first five-year period the section is in effect is an estimated reduction in cost of $1,326,476 in fiscal year (FY) 2004; $1,832,393 in FY 2005; $1,938,933 in FY 2006; $2,043,229 in FY 2007; and $2,155,065 in FY 2008.

Judy Denton, Deputy Commissioner for Family Services, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is the TANF-SP Program will be able to continue to serve eligible clients while conforming with the budget limits set by the 78th Texas Legislature in House Bill 1. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the proposal concerns client eligibility and does not affect the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section, but persons who are ineligible for TANF-SP benefits as a result of this change may be adversely affected. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438- 2909 in DHS's Texas Works Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-252, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.081.

§3.704. Types of Resources.

(a) (No change.)

(b) Temporary Assistance for Needy Families (TANF). Exclusions from resources in TANF are:

(1)-(15) (No change.)

(16) Vehicles used for transportation. [~~For TANF State Program (TANF-SP) families, DHS exempts up to $15,000 of the fair~~

~~market value of one countable vehicle owned by an applicant family.~~] For [~~all other~~] TANF cash assistance [~~clients~~], DHS exempts up to $4,650 of the fair market value of each vehicle [~~licensed vehicles as specified in Human Resources Code §31.032(d)(2)~~].

(17) (No change.)

(c)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER V. MEDICAID ELIGIBILITY

40 TAC §§3.2201 - 3.2207

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Human Services (DHS) proposes to repeal §§3.2201-3.2207, concerning Medicaid eligibility for households that are eligible for Temporary Assistance for Needy Families (TANF), in its Texas Works chapter. The purpose of the repeals is to remove the rules from Chapter 3 so that they can be updated and proposed as new rules, written in plain language format, in their own chapter, DHS's newly titled Chapter 4. The new rules are proposed elsewhere in this issue of the *Texas Register*.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed repeals are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Judy Denton, Deputy Commissioner for Family Services, has determined that, for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of repealing the sections is that rules on medical assistance for families that are eligible for TANF will be located in their own chapter and will be easier to understand. There is no adverse economic effect on small or micro businesses, or businesses of any size, as a result of repealing the sections; the rules concern client eligibility and requirements and do not affect the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals. There is no anticipated effect on local employment in geographic areas affected by these repeals.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438- 2909 in DHS's Texas Works Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-162, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001-22.038 and §§32.001- 32.053.

§3.2201. Eligibility Requirement.

§3.2202. Three Months Prior.

§3.2203. Four Months Post-Medicaid Eligibility.

§3.2204. Type Program 07 Medicaid.

§3.2205. Type Program 37 Medicaid.

§3.2206. Third-Party Resources.

§3.2207. Failure to Comply.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
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Texas Department of Human Services
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CHAPTER 4. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)-LEVEL MEDICAL ASSISTANCE

The Texas Department of Human Services (DHS) proposes to repeal the rules in Chapter 4, Medicaid Programs--Children and Pregnant Women, consisting of §§4.1002, 4.1004, 4.1006, 4.1008, 4.1010, 4.1012, 4.1014, and 4.1016; and proposes new §§4.1-4.11, concerning Temporary Assistance for Needy Families (TANF)-level medical assistance, in its newly titled Chapter 4. The repeals delete the current rules in Chapter 4 so that those rules concerning Medicaid programs for children and pregnant women can be rewritten in plain language and moved to DHS's Chapter 2. The purpose of the new sections is to rewrite the rules governing TANF-level medical assistance that currently are in DHS's Chapter 3, Subchapter V (§§3.2201-3.2207), in plain language format and move them into their own chapter. Putting the rules for TANF-level Medicaid in their own chapter more clearly separates the requirements for TANF-level Medicaid under the Social Security Act, §1931 (42 U.S.C. §1396u-1) from the requirements for TANF benefits

in DHS's Chapter 3. The new rules also update program references, correct several citations, and implement decisions made during the 78th Texas legislative session.

New §4.2 provides the resource limits applicable to TANF-level Medicaid eligibility. These resource limits now differ from the TANF resource limits that were changed by the passage of House Bill (HB) 2292 and Senate Bill 1862, 78th Texas Legislature. New §4.8 and §4.9 clarify the current requirement that medical support and compliance with the medical support requirement are applicable to recipients of TANF-level medical assistance. New §4.10 and §4.11 are proposed to implement HB 2292, 78th Texas Legislature, which allows the Texas Health and Human Services Commission, or any human services agency as defined by the Government Code, §531.001, to deny medical assistance to a person who is eligible for financial assistance but for whom financial assistance is not paid because of the person's failure to comply with the work requirement. Implementation of this provision was assumed in the funding levels authorized by the 78th Texas Legislature.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are fiscal implications for state government as a result of enforcing or administering the sections. There are no fiscal implications for local government as a result of enforcing or administering the sections.

The effect on state government for the first five-year period the sections are in effect is an estimated additional cost of $67,681 in fiscal year (FY) 2004; and an estimated reduction in cost of $16,182,014 in FY 2004; $11,086,560 in FY 2005; $10,663,717 in FY 2006; $10,316,612 in FY 2007; and $10,010,484 in FY 2008.

Judy Denton, Deputy Commissioner for Family Services, has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the sections is that rules on medical assistance for families who are eligible for TANF will be located in their own chapter, will be easier for the public to understand, and will be in compliance with changes made by the 78th Texas Legislature. There is no adverse economic effect on small or micro businesses, or businesses of any size, as a result of enforcing or administering the sections; the rules concern the eligibility and requirements of households for TANF-level medical assistance and do not affect the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, but persons who do not comply with TANF work requirements may be adversely affected. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438- 2909 in DHS's Texas Works Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-162, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m., in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER A. PROGRAM REQUIREMENTS

40 TAC §§4.1 - 4.11

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§4.1. Eligibility Requirement.

Households eligible for Temporary Assistance for Needy Families benefits also qualify for medical assistance under Medicaid, as provided by the Social Security Act, §1931 (42 U.S.C. §1396u-1).

§4.2. Resources.

The Temporary Assistance for Needy Families (TANF) rules for resources specified in Chapter 3 of this title (relating to Texas Works) apply, except that:

(1) applicants, if otherwise eligible, are not denied Medicaid because they transfer resources to qualify for assistance;

(2) for households with two certified parents, the Texas Department of Human Services excludes up to $15,000 of the fair market value of one countable vehicle a TANF family owns; and

(3) the resource limit is $2,000, or $3,000 if the household has an aged or disabled member.

§4.3. Three Months Prior Medicaid Coverage.

(a) Three months prior Medicaid coverage refers to retroactive coverage of applicants and recipients with unpaid medical expenses during one or more of the three months before the application month.

(b) To qualify for three months prior Medicaid coverage, Temporary Assistance for Needy Families Program applicants and recipients must meet the requirements of the Social Security Act, §1902(a)(34) (42 U.S.C. §1396a(a)(34)).

§4.4. Four Months Post-Medicaid Eligibility.

Households are eligible for four months post-Medicaid coverage, as provided by the Social Security Act, §1931 (42 U.S.C. §1396u- 1), if they:

(1) received Temporary Assistance for Needy Families or Medicaid only under the Social Security Act, §1931; and

(2) then were denied cash assistance or Medicaid because of receipt of child support.

§4.5. Twelve-Month Transitional Medicaid.

(a) Temporary Assistance for Needy Families or Medicaid only recipients, certified as required by the Social Security Act, §1931 (42 U.S.C. §1396u-1), and the Human Resources Code, §32.0255, who are denied because of new or increased earnings or loss of earned income deductions, may be eligible for 12 months post-Medicaid coverage, as provided by the Social Security Act, §1925 (42 U.S.C. §1396r-6).

(b) To remain eligible during the 12 months post-Medicaid coverage, recipients must report changes in the fourth, seventh, and tenth months.

(c) Recipients who report changes are denied only for one or more of the following reasons:

(1) no eligible child is in the home;

(2) on the seventh or tenth month report, the caretaker relative had no earnings in one of the previous three months; or

(3) the average monthly income, minus child-care costs, exceeds 185% of the federal poverty level on the seventh or tenth month report.

§4.6. Third-Party Resources.

Temporary Assistance for Needy Families (TANF)-level medical assistance recipients must comply with third-party resources requirements, as provided by the Human Resources Code, §32.033 (relating to Subrogation).

§4.7. Failure to Comply with Third-Party Resources.

A Temporary Assistance for Needy Families (TANF)-level medical assistance recipient who fails to comply with the third- party resources requirements in Human Resources Code, §32.033, without good cause is ineligible for Medicaid.

§4.8. Medical Support.

Temporary Assistance for Needy Families (TANF)-level medical assistance recipients must comply with medical support requirements, as provided by the Social Security Act, §1912(a)(1) (42 U.S.C. §1396k(a)(1)).

§4.9. Failure to Comply with Medical Support.

A Temporary Assistance for Needy Families (TANF)-level medical assistance recipient who fails to comply with medical support without good cause is ineligible for Medicaid, as provided by the Social Security Act, §1912(a)(1) (42 U.S.C. §1396k(a)(1)).

§4.10. Work Requirement.

Temporary Assistance for Needy Families (TANF)-level medical assistance recipients receiving TANF cash assistance must comply with work requirements, as provided by the Social Security Act, §1931(b)(3) (42 U.S.C. §1396u- 1(b)(3)).

§4.11. Failure to Comply with Work Requirements.

A Temporary Assistance for Needy Families (TANF)-level medical assistance recipient whose TANF cash assistance was terminated pursuant to Social Security Act, §407(e)(1)(B) (42 U.S.C. §607(e)(1)(B)) because of refusing to work without good cause is ineligible for Medicaid until there is no longer a basis for the termination of cash assistance because of such refusal, as provided by the Social Security Act, §1931(b)(3) (42 U.S.C. §1396u-1(b)(3)).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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CHAPTER 4. MEDICAID PROGRAMS--CHILDREN AND PREGNANT WOMEN
SUBCHAPTER A. ELIGIBILITY REQUIREMENTS

40 TAC §§4.1002, 4.1004, 4.1006, 4.1008, 4.1010, 4.1012, 4.1014, 4.1016

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001-22.038 and §§32.001- 32.053.

§4.1002. Application Procedures.
§4.1004. Eligible Groups.
§4.1006. Requirements for Application.
§4.1008. Definition.
§4.1010. Determining Income Eligibility.
§4.1012. Medicaid Eligibility.
§4.1014. Right to Appeal.
§4.1016. Client Reporting Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 15. MEDICAID ELIGIBILITY
SUBCHAPTER E. INCOME

40 TAC §15.450

The Texas Department of Human Services (DHS) proposes to amend §15.450, concerning general principles concerning income, in its Medicaid Eligibility chapter. The purpose of the amendment is to comply with House Bill 2292, in which the 78th Legislature approved a reduction in the personal needs allowance (PNA) for Medicaid clients in nursing facilities and intermediate care facilities for persons with mental retardation or related conditions (ICF/MR- RC). The PNA reduction from $60 to $45 per month is effective September 1, 2003. For Supplemental Security Income (SSI) clients who receive the $30 federal benefit rate, the proposal changes their state supplement from $30 to $15 per month, so they also have $45 for personal use.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

The effect on state government for the first five-year period the section is in effect is an estimated reduction in cost of $6,472,668 in fiscal year (FY) 2004; $6,520,313 in FY 2005; $6,520,313 in FY 2006; $6,520,313 in FY 2007; and $6,520,313 in FY 2008.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is DHS will be in compliance with state law and the agency's legislative appropriation. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because facilities will collect an additional $15 per month from Medicaid clients to offset the $15 reduction in the Medicaid vendor payment. The additional $15 monthly payment ($180 per year) by Medicaid clients is an anticipated economic cost to persons who are required to comply with the section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Randy Wyatt at (512) 438- 4807 in DHS's Medicaid Eligibility section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-244, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment affects the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§15.450. General Principles Concerning Income.

(a)-(g) (No change.)

(h) A personal needs allowance (PNA) is an amount of a client's income that a client in an institutional setting may retain for his personal use. It will not be applied against the costs of medical assistance furnished in the facility. Clients in institutional settings may retain $45 [~~$60~~] per month for their personal use. In couple cases, each spouse may retain $45 [~~$60~~]. For SSI clients who receive the $30 reduced federal benefit, the state supplements their incomes by $15 [~~$30~~] per month to allow a total of $45 [~~$60~~] for personal needs. The effective date of the $45 [~~$60~~] PNA is September 1, 2003 [~~2001~~].

(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Department of Human Services (DHS) proposes to amend §19.216, concerning license fees; §19.602, concerning incidents of abuse and neglect reportable to DHS by facilities; §19.1504, concerning drug security; §19.1510, concerning emergency medication kits; §19.1921, concerning general requirements for a nursing facility; §19.2008, concerning investigations of incidents and complaints; and §19.2116, concerning involuntary appointment of a trustee, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter.

The purpose of the amendments is to implement changes mandated by the 78th Legislature. The amendment to §19.216 implements Senate Bill (SB) 1237 by exempting veterans homes from paying a trust fund fee. The amendment to §19.602 implements House Bill (HB) 1074 by requiring facility owners and employees to report abuse, neglect, or exploitation of residents to DHS. The amendment also identifies allegations or findings that must be reported to local or state law enforcement agencies and adds "law enforcement agencies" to the rule title to more accurately identify the section's content. The amendment to §19.1504 implements HB 2292 regarding medication storage requirements. The amendment to §19.1510 implements HB 1040 by allowing a U.S. Department of Veterans Affairs or other federally operated pharmacy to maintain emergency medication kits for veterans homes. The amendment to §19.1921 references Health and Safety Code, Chapter 250, which states that nursing homes and assisted living facilities must obtain criminal history checks for all employees in accordance with SB 923. The amendment to §19.2008 implements SB 1074 by deleting procedural language for investigating complaints and incidents, which will be investigated in accordance with §242.126 of the Health and Safety Code. The amendment to §19.2116 implements SB 1237 by adding language that requires the Veterans Land Board to pay the fee for veterans home trustees.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are fiscal implications for state government as a result of enforcing or administering the sections. There are no fiscal implications for local governments as a result of enforcing or administering the sections.

The effect on state government for the first five-year period the sections are in effect is an estimated loss in revenue of $7,680 in fiscal year (FY) 2004; $7,680 in FY 2005; $7,680 in FY 2006; $7,680 in FY 2007; and $7,680 in FY 2008.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the rules regarding the Texas State Veterans Homes Program is a cost savings for the Veterans Homes Program. Eliminating trust fund licensing fees and allowing veterans homes to obtain medications from federally operated pharmacies saves

costs for the Veterans Homes Program. Outlining proper storage of medication ensures the integrity and quality of medications administered to nursing facility residents. Requiring nursing facility owners and employees to report serious allegations of abuse, neglect, or exploitation to local or state law enforcement agencies heightens security for residents. Deleting obsolete, prescriptive, or redundant language results in sections that are more accurate and easier for the general public to understand. A safer environment for residents should be created when facilities are required to check criminal histories for all of their employees and when the number of crimes that will bar employment in long term care facilities is increased.

There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because allowing veterans homes to obtain medications for emergency medication kits from federally operated pharmacies will have negligible impact on commercial pharmacies. Veterans homes currently use federally operated pharmacies to fill prescriptions, and the proposal gives the four homes in Texas the option of refilling medications with federally operated pharmacies when the kits are used. Exempting veterans homes from paying the trust fund licensing fee will not result in an adverse effect on businesses because only four of more than 1,000 nursing facilities in Texas are affected. The increase in fees to other nursing facilities will be negligible. Other rule revisions delete obsolete or prescriptive language and do not add any additional requirements for nursing facilities. The rule that stipulates that owners as well as employees must report abuse, neglect, or exploitation and report certain findings or allegations to local or state law enforcement agencies at the most will require an additional notification to law enforcement on rare occasions and is considered a negligible expense. The cost to facilities of obtaining criminal history checks for facility applicants and employees should be negligible. There should be negligible or no additional costs to nursing facilities to properly store medications. The anticipated economic cost to persons who are required to comply with the proposed sections is negligible. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Marcia Bowen at (512) 438-3529 in DHS's Long Term Care-Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-251, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

40 TAC §19.216

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendment affects the Health and Safety Code, §§242.001 - 242.852

§19.216. License Fees.

(a) (No change.)

(b) Trust fund fee.

(1) - (2) (No change.)

(3) Veterans homes (as defined in the Natural Resources Code, §164.002) are exempt from paying a trust fund fee.

(4) [~~(3)~~] DHS may charge and collect a fee more than once a year only if necessary to ensure that the amount in the nursing and convalescent trust fund is sufficient to allow required disbursements.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
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For further information, please call: (512) 438-3734

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SUBCHAPTER G. RESIDENT BEHAVIOR AND FACILITY PRACTICE

40 TAC §19.602

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendment affects the Health and Safety Code, §§242.001 - 242.852.

§19.602. Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services (DHS) and Law Enforcement Agencies by Facilities.

(a) A [~~Any~~] facility owner or employee [~~staff member~~] who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person must report the abuse, neglect, or exploitation.

(b) - (d) (No change.)

(e) A local or state law enforcement agency must be notified of reports described in subsection (a) of this section, which allege that:

(1) a resident's health or safety is in imminent danger;

(2) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;

(3) a resident has been hospitalized or treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;

(4) a resident has been a victim of any act or attempted act described in the Penal Code, §§21.11, 22.011, or 22.021; or

(5) a resident has suffered bodily injury, as that term is defined in the Penal Code, §1.01, because of conduct alleged in the report of abuse or neglect or other complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER P. PHARMACY SERVICES

40 TAC §19.1504, §19.1510

The amendments are proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendments affect the Health and Safety Code, §§242.001 - 242.852.

§19.1504. Drug Security.

(a) - (e) (No change.)

(f) The facility must store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security [~~drugs requiring refrigeration in a refrigerator in the medication room or in a separate locked medication storage box in a refrigerator near the nursing station. Only food and beverage items for resident use may be kept in the medication refrigerator, but they must be kept separate from the residents' drugs~~].

~~[(g) The facility must store drugs used externally separately from internal drugs. The facility must store poisons separately from all drugs.]~~

(g) [~~(h)~~] Medications of deceased residents, medications that [~~which~~] have passed the expiration date, and medications that [~~which~~] have been discontinued must be securely stored and reconciled. These medications must be disposed of according to federal and state laws or rules on a quarterly basis. Discontinued drugs may be reinstated if reordered prior to destruction. These medications cannot be given to a family member or representative.

(h) [~~(i)~~] When the directions for administration of a resident's medication have changed, but the existing supply of medication can still be administered accurately, the medication must not be destroyed. The facility must affix a change-of-direction ancillary sticker or similar system and use the remaining medication. The medication label must be updated at the time of next dispensing.

§19.1510. Emergency Medication Kits.

Stocks of inventoried emergency medications may be kept in facilities.

(1) Emergency medication kits must be maintained in compliance with 22 TAC §291.20(b) (relating to Remote Pharmacy Services [~~Using Emergency Medication Kits~~]), with the exception of emergency medication kits in veterans homes, as defined by Natural Resources Code, §164.002. In veterans homes, a United States Department of Veterans Affairs pharmacy or another federally operated pharmacy may maintain emergency medication kits.

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1921

The amendment is proposed under Health and Safety Code, Chapter 250, which authorizes DHS to adopt rules on criminal history checks on persons employed by certain types of facilities.

The amendment affects the Health and Safety Code, §250.001 - 250.009.

§19.1921. General Requirements for a Nursing Facility.

(a) - (k) (No change.)

(l) Each facility must comply with the provisions of the Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities) [~~Persons convicted of certain crimes may not be employed in nursing facilities. As required by Chapter 250 of the Health and Safety Code and as found in §§76.101-76.106 of this title (relating to Criminal History Check of Employees in Facilities for Care of the Aged and Persons with Disabilities), the facility must, prior to an offer of employment, conduct criminal history checks on persons whose positions involve direct contact with residents, unless they are licensed under another law~~].

(m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER U. INSPECTIONS, SURVEYS, AND VISITS

40 TAC §19.2008

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendment affects the Health and Safety Code, §§242.001 - 242.852.

§19.2008. Investigations of Incidents and Complaints.

(a) - (c) (No change.)

(d) Investigations under this section are conducted in accordance with Health and Safety Code, §242.126. [~~DHS will begin the investigation:~~]

[~~(1) within 24 hours of receipt of the report or other allegation if the report of abuse or neglect or other complaint alleges:~~]

[~~(A) a resident's health or safety is in imminent danger;~~]

[~~(B) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint; or~~]

[~~(C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint; or~~]

[~~(2) before the end of the next working day after the date of receipt of the report of abuse or neglect or other complaint if the report or complaint alleges the existence of circumstances that could result in abuse or neglect and that could place a resident's health or safety in imminent danger.~~]

[~~(e) In investigating the report of abuse or neglect or other complaint, the DHS investigator will:~~]

[~~(1) make an unannounced visit to the nursing facility to determine the nature and cause of the alleged abuse or neglect of the resident;~~]

[~~(2) interview each available witness identified by any source as having personal knowledge relevant to the report of abuse or neglect or other complaint;~~]

[~~(3) personally inspect any physical circumstance that is relevant and material to the report of abuse or neglect or other complaint and that may be objectively observed; and~~]

[~~(4) not later than the 30th day after the date the investigation is complete, write an investigation report that includes:~~]

[~~(A) the investigator's personal observations;~~]

[~~(B) a review of relevant documents and records;~~]

[~~(C) a summary of each witness' statement; and~~]

[~~(D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation.~~]

[~~(f) Upon receipt of a complaint, other than those described under subsections (b) through (e) of this section, DHS will make a preliminary review of the complaint. Within a reasonable time after receipt of the complaint, DHS will make an on-site inspection or otherwise respond to the complaint, unless DHS determines that:~~]

[~~(1) the person made the complaint to harass the facility;~~]

[~~(2) the complaint is without reasonable basis; or~~]

[~~(3) sufficient information in the possession of DHS indicates that corrective action has been taken.~~]

(e) [~~(g)~~] Investigations of reports do not preclude actions under the provisions of Subchapter V [~~H~~] of this chapter (relating to Enforcement).

(f) [~~(h)~~] If the initial phase of an incident or complaint investigation concludes that no abuse or neglect adversely affecting the physical or mental health or welfare of a resident has occurred, no further investigation will be undertaken.

[~~(i) In cases concluded to be abuse, neglect, or exploitation, the written report of the investigation by DHS, along with its recommendations, will be submitted to the appropriate district attorney and, if a law enforcement agency has not investigated the report of abuse or neglect or other complaint, to the appropriate law enforcement agency, as well as to the appropriate state agencies, upon request. The investigation report will include:~~]

[~~(1) the nature, extent and cause of such abuse or neglect;~~]

[~~(2) the identity of the person responsible for the abuse or neglect;~~]

[~~(3) the names and conditions of other residents who are affected or likely to be affected by the alleged abuse or neglect;~~]

[~~(4) the evaluation of the persons responsible for the care of residents including the adequacy of the persons in numbers and the competence of persons to deliver the care intended, including specific evaluation individually of those persons directly involved in causing abuse or neglect; and~~]

[~~(5) the adequacy of the environment which may include general operation, competence of staff, attitude of staff, physical environment, and other considerations.~~]

(g) [~~(j)~~] The individual reporting the alleged abuse or neglect or other complaint, the resident, the resident's family, any person designated by the resident to receive information concerning the resident, and the facility will be notified of the results of DHS's investigation of a reported case of abuse or neglect or other complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
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SUBCHAPTER V. ENFORCEMENT
DIVISION 2. LICENSING REMEDIES

40 TAC §19.2116

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendment affects the Health and Safety Code, §§242.001 - 242.852.

§19.2116. Involuntary Appointment of a Trustee.

(a) (No change.)

(b) A trustee appointed under this section is entitled to a reasonable fee as determined by the court, to be paid from the Nursing and Convalescent Home Trust Fund, unless the trustee is placed in a veterans home. When a trustee is placed in a veterans home (as defined in

Natural Resources Code, §164.002), the Veterans Land Board pays the trustee's fee.

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. RESIDENT RIGHTS

40 TAC §19.405

The Texas Department of Human Services (DHS) proposes to amend §19.405, concerning additional requirements for trust funds in Medicaid-certified facilities, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendment is to comply with the requirements of House Bill 2292, 78th Texas Legislature, which amended the Human Resources Code, §32.0321, concerning surety bonds. The amendment allows Medicaid nursing facilities to obtain surety bonds to guarantee resident trust funds in an amount not to exceed the 12-month average of the monthly averages of the trust funds and provides that if a facility employee is responsible for the loss of trust fund monies, neither the resident, the resident's family members, nor the resident's legal representative is responsible for charges due the facility.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section.

Bettye Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that, by lowering the dollar value of the surety bonds, facilities will be able to obtain bonds more readily. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the section decreases the dollar amount of the trust fund surety bonds that Medicaid nursing facilities are required to purchase. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Doris Gifford at (512) 438- 2538 in DHS's Community Care Contracting section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-243, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§19.405. Additional Requirements for Trust Funds in Medicaid-certified Facilities.

(a)-(f) (No change.)

(g) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary of Health and Human Services to assure the security of all personal funds of residents deposited with the facility.

(1) The amount of a surety bond must equal the average monthly balance of all the facility's resident trust fund accounts for the 12-month period preceding the bond issuance or renewal date.

(2) Resident trust fund accounts are specific only to the single facility purchasing a resident trust fund surety bond.

(3) If a facility employee is responsible for the loss of funds in a resident's trust fund account, the resident, the resident's family, and the resident's legal representative are not obligated to make any payments to the facility that would have been made out of the trust fund had the loss not occurred.

(h)-(r) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 20. COST DETERMINATION PROCESS

40 TAC §20.112

The Texas Department of Human Services (DHS) proposes to amend §20.112, concerning attendant compensation rate enhancement, in its Cost Determination Process chapter. The purpose of the amendment is to limit the enrollment of new contracted providers in the Attendant Compensation Rate Enhancement, pending available funds. This amendment restricts the participation opportunity of new contracted providers if legislation or budgetary constraints limit the number of enhancement levels and/or enhanced amounts awarded to providers currently participating in the rate enhancement. By limiting the participation opportunity, this amendment will allow current participating

providers to continue to receive their awarded enhancement levels without being subjected to an open enrollment and the possibility of reduced enhancement levels or enhanced amounts. If funding becomes available, new contracted providers will have the opportunity to participate in the rate enhancement during the subsequent open enrollment period.

The Texas Health and Human Services Commission (HHSC) is proposing related policy in its Chapter 355 in this issue of the *Texas Register*.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section.

Bettye Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that providers currently participating in the rate enhancement will continue to receive their awarded enhancement levels without being forced to lower their enhancement or be removed from participation. New contracted providers will have the opportunity to participate in the rate enhancement during the subsequent open enrollment period if funding becomes available. There is no adverse economic effect on small or micro businesses, or on any size business, as a result of enforcing or administering the section, because the proposal allows participating providers to maintain their current enhancement payment level. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Alisa Jacquet at (512) 685- 3129 in HHSC's Rate Analysis section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-263, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

A public hearing is scheduled for Wednesday, July 16, 2003, from 2:00 pm until 5:00 pm. The hearing will be held in room 1410 at the Brown-Heatly Building, 4900 N. Lamar Blvd., Austin, Texas 78751.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Chapters 22, which authorizes DHS to administer public assistance programs.

The amendment implements the Human Resources Code, §§22.0001-22.038.

§20.112. Attendant Compensation Rate Enhancement.

(a)-(f) (No change.)

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DHS client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized signator as per the DHS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and received by DHS or its designee within 30 days of the date of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. The granting of newly requested rate enhancement increments as outlined in subsection (p) of this section is limited to available funds. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (m) of this section until:

(1)-(3) (No change.)

(h)-(o) (No change.)

(p) Granting additional attendant compensation rate enhancement increments. DHS or its designee divides all requests for attendant compensation rate enhancement increments into two groups: pre-existing rate enhancement increments which providers requested to carry over from the prior year and newly requested rate enhancement increments. Newly requested rate enhancement increments may be requested by providers that were nonparticipants in the prior year, [~~or~~] by providers that were participants during the prior year desiring to be granted additional rate enhancement increments, or by new contracts as described in subsection (g) of this section. Using the process described herein, DHS or its designee first determines the distribution of carry-over rate enhancement increments. If funds are available after the distribution of carry-over rate enhancement increments, DHS or its designee determines the distribution of newly requested rate enhancement increments as follows:

(1)-(2) (No change.)

(q)-(dd) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 46. LICENSED PERSONAL CARE FACILITIES CONTRACTING WITH THE TEXAS DEPARTMENT OF HUMAN SERVICES TO PROVIDE RESIDENTIAL CARE SERVICES

The Texas Department of Human Services (DHS) proposes to repeal Subchapter A, concerning scope, §46.1; Subchapter B, concerning definitions, §46.1001; Subchapter C, concerning provider participation, §§46.2001, 46.2005, and 46.2006; Subchapter D, concerning claims payment, §§46.3001, 46.3005, and 46.3007; Subchapter E, concerning provider contracts, §§46.4004 - 46.4006; Subchapter F, concerning records, §46.5001; Subchapter G, concerning support documents, §46.7002; and Subchapter H, concerning administrative and financial errors, §§46.8001 - 46.8003. DHS proposes new

Subchapter A, concerning introduction, §46.1 and §46.3; Subchapter B, concerning provider contracts, §§46.11, 46.13, 46.15, 46.17, 46.19, 46.21, 46.23, 46.25, and 46.27; Subchapter C, concerning provider requirements, §§46.31, 46.33, 46.35, 46.37, 46.39, 46.41, 46.43, 46.45, 46.47, 46.49, 46.51, and 46.53; and Subchapter D, concerning trust funds, §§46.61, 46.63, 46.65, 46.67, 46.69, and 46.71, in its renamed Contracting to Provide Assisted Living and Residential Care Services chapter.

An earlier version of this proposal appeared in the March 28, 2003, issue of the *Texas Register* (28 TexReg 2709) in order to rewrite the chapter in plain language. The proposal was withdrawn on June 6, 2003. The repeals and new sections of Chapter 46 are being re-proposed at this time to incorporate both the plain language rewrite and to add new sections that include requirements for a room and board payment.

The purpose of the repeals and new sections is to rewrite the chapter in plain language so that the sections are easier to understand. The new sections also incorporate existing policy into rule language, as well as provide clearer definitions and explanations of policies. These improved policies include: a new definition of personal leave day, a list of additional items the client may request and for which the facility may charge, directions for the facility when a credit balance exists on the client's copayment and room and board account, documentation requirements for a copayment and room and board ledger system, improved trust fund guidelines patterned after nursing facility trust fund guidelines, receipt requirements, clarification of reasons for service suspension to ensure consistency with other Community Care for Aged and Disabled (CCAD) programs, a listing of required financial records the facility is expected to keep for audit purposes, and a clarification of facility monitoring methods. Current provider requirements for the Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) Program and the CCAD Residential Care (RC) Program are in different rule chapters. The new sections also incorporate provider requirements for the CBA AL/RC and CCAD RC programs into the same rule chapter.

The purpose of new §§46.3(18), 46.21(e), 46.27(c)(2)(F)(iv), 46.37, and 46.49(d)(1) is to add room and board requirements for the CCAD RC Program. The addition of a room and board payment requirement will provide DHS with greater flexibility in funding and administering the program. Effective September 1, 2003, all CCAD RC clients will begin to pay a room and board payment directly to the facility. The total amount of money the client pays will not increase. Clients and provider agencies will be notified of the standard room and board amounts initially, and when changes occur.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the sections.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is to have rules that providers, facilities, and the public can more easily navigate and understand. Rule consistency will help providers and agency staff ensure quality services for clients. New and enhanced requirements for trust funds will also better protect both clients and facilities when a trust fund exists. In addition, the proposal allows clients to be served by the CCAD RC Program within appropriated funds. The public will benefit by having rules available that reflect and implement the most recent legislative changes. There is no anticipated adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because the proposal does not add any new requirements that would have a negative economic impact on businesses. The majority of policy additions to this chapter are already program policy. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Cathryn Horton at (512) 438-4259 in DHS's Long Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-116, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER A. SCOPE

40 TAC §46.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.1. Scope

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. DEFINITIONS

40 TAC §46.1001

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.1001. Definitions of Program Terms.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. PROVIDER PARTICIPATION

40 TAC §§46.2001, 46.2005, 46.2006

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.2001. Required Services.

§46.2005. Standards for Operation.

§46.2006. Facility Reporting and Notification Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. CLAIMS PAYMENT

40 TAC §§46.3001, 46.3005, 46.3007

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.3001. General Billings/Claims Payment Requirements.

§46.3005. Claims Requirements.

§46.3007. Copayment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. PROVIDER CONTRACTS

40 TAC §§46.4004 - 46.4006

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.4004. Unit Rate Contracts.

§46.4005. Facility Charges for Hospital/Nursing Facility Stays.

§46.4006. Termination of Contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. RECORDS

40 TAC §46.5001

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.5001. Record Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. SUPPORT DOCUMENTS

40 TAC §46.7002

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.7002. Reimbursement Methodology for Residential Care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. ADMINISTRATIVE AND FINANCIAL ERRORS

40 TAC §§46.8001 - 46.8003

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.8001. Administrative Errors.

§46.8002. List of Administrative Errors.

§46.8003. Financial Errors.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 46. CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES

SUBCHAPTER A. INTRODUCTION

40 TAC §46.1, §46.3

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.1. Purpose.

This chapter establishes the requirements for facilities contracting to provide assisted living and residential care services to eligible clients through the Texas Department of Human Services Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) Program and the Community Care for the Aged and Disabled (CCAD) Residential Care (RC) Program. The requirements described in this chapter apply to both CBA AL/RC and CCAD RC, unless otherwise specified in the text.

§46.3. Definitions.

The words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise.

(1) Assisted living services--Services provided in an assisted living facility to eligible Texas Department of Human Services (DHS) clients under the Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) or the Community Care for Aged and Disabled (CCAD) Residential Care (RC) programs.

(2) Assisted Living/Residential Care (AL/RC) Program--A 24-hour residential care program for CBA clients.

(3) Attendant--A facility employee who provides direct care to clients. An attendant may have other duties in addition to direct client care.

(4) Case manager--A DHS employee who is responsible for case management activities. Activities include eligibility determination, client registration, assessment and reassessment of client need, service plan development, and intercession on the client's behalf.

(5) Client--A CCAD or CBA client, as defined in Chapter 48 of this title (relating to Community Care for Aged and Disabled), who is eligible to receive services under this chapter.

(6) Community Based Alternatives (CBA)--A Medicaid program that provides services to eligible adults who are aged and/or disabled as an alternative to institutional care in a nursing facility. CBA services are provided in accordance with the waiver provisions of §1915(c) of the Social Security Act (42 U.S.C. §1396n(c)).

(7) Community Care for Aged and Disabled (CCAD)--A group of DHS programs that provides a variety of Title XIX and Title XX-funded community-based services.

(8) Contract--The formal, written agreement between DHS and an assisted living facility to provide services to DHS clients eligible under this chapter in exchange for reimbursement.

(9) Contract manager--A DHS employee who is responsible for the overall management of the contract with the assisted living facility.

(10) Contracted assisted living facility--An assisted living facility that contracts with DHS to provide CBA AL/RC services or CCAD RC services or both. Any reference to facility in this chapter means contracted assisted living facility, unless otherwise specified in the text.

(11) Copayment--The amount of personal income a client must pay to the facility toward the cost of care.

(12) Days--Any reference to days means calendar days, unless otherwise specified in the text. Calendar days include weekends and holidays.

(13) Facility manager--The facility employee who is responsible for the day-to-day operation of a facility.

(14) Licensed assisted living facility--A facility licensed by DHS Long Term Care Regulatory under the Health and Safety Code, Chapter 247.

(15) Personal leave day--A continuous 24-hour period, measured from midnight to midnight, when the client is absent from the facility for personal reasons.

(16) Representative--The client's spouse, other responsible party, or legal representative.

(17) Residential Care (RC) Program--An assisted living and emergency care program for CCAD clients.

(18) Room and board--The amount of personal income a client must pay to the facility toward the cost of lodging and food.

(19) Signature--A person's name or a mark representing his/her name on a document to certify it is correct. Initials are not an acceptable substitute for a signature.

(20) Trust fund--The services provided when the facility performs or assists with money management at the written request of the client or the client's representative.

(21) Witness--A person who signs to verify distribution to or from a trust fund. A witness is identified in the client file by name, address, and relationship to the client, the client's representative, or the facility. A witness can be any person except:

(A) the person(s) responsible for accounting for the client's trust fund;

(B) the supervisor of the person(s) responsible for the client's trust fund;

(C) a person supervised by the person(s) responsible for the client's trust fund; or

(D) the person(s) who accepts the withdrawn funds.

(22) Working days--Days DHS is open for business.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. PROVIDER CONTRACTS

40 TAC §§46.11, 46.13, 46.15, 46.17, 46.19, 46.21, 46.23, 46.25, 46.27

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.11. Contracting Requirements.

(a) General contracting requirements. A facility must meet all provisions described in this chapter and Chapter 49 of this title (relating to Contracting for Community Care Services).

(b) Assisted living services contracting requirements. To qualify to provide assisted living services under contract with the Texas Department of Human Services (DHS), a facility must comply with the following requirements:

(1) The facility must be licensed as defined in §92.4 of this title (relating to Types of Assisted Living Facilities). The facility must be allowed under licensure to provide the required services described

in §46.41 of this chapter (relating to Required Services). Due to the licensure requirements, Type C and Type E facilities are not able to provide the required services under this chapter.

(2) The facility must have a separate contract for each facility that provides assisted living services.

(3) The facility must specify the number of beds for DHS clients in its contract, as follows:

(A) The facility must ensure that the number of beds contracted are in rooms that meet the requirements in §46.13 of this chapter (relating to Housing Options).

(B) The facility must ensure the number of DHS clients served by the facility does not exceed the number of contracted DHS beds.

(C) The facility may adjust the number of beds for DHS clients by contract amendment.

(4) The facility must comply with all other applicable DHS rules and regulations.

(c) Disclosure statement requirements. The facility must ensure that the Assisted Living Disclosure Statement, as required by Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities), does not conflict with the program requirements.

(d) Client referrals. The facility must accept all DHS referrals unless:

(1) the referral would cause the facility to exceed licensed capacity;

(2) the referral would cause the facility to exceed the number of beds for DHS clients that the facility has specified in its contract;

(3) there are no specific DHS designated rooms or apartments available at the time of the referral; or

(4) the facility is unable to meet the client's needs and has followed the procedures described in §46.35 of this chapter (relating to Interdisciplinary Team).

(e) Contract assignment. In addition to the procedures described in §49.5 of this title (relating to Contract Assignment), the facility must follow the procedures described in §46.71 of this chapter (relating to Trust Fund Procedures for Client Discharge) for assignment of the trust fund account and records.

§46.13. Housing Options.

(a) Setting. A facility must specify in the contract the type(s) of setting(s) it uses to provide assisted living services according to the following guidelines:

(1) Assisted living apartment. An assisted living apartment setting is a living unit that is a private space with living and sleeping areas, a kitchen, a bathroom, and adequate storage space. The bedroom must be single occupancy, except when the participant requests double occupancy in writing. The living unit must have private kitchen and bath facilities.

(A) Size. Assisted living apartments must have a minimum of 220 square feet, not including the bathroom. Current contracted assisted living apartments that do not meet the square footage requirement may remain at their current size unless the apartment is remodeled. Remodeling includes:

(i) the construction, removal, or relocation of walls and partitions;

(ii) the construction of foundations, floors, or ceiling-roof assemblies;

(iii) the expansion or alteration of safety systems, including:

(I) sprinkler;

(II) fire alarm; and

(III) emergency systems; or

(iv) the conversion of space in a facility to a different use.

(B) Kitchen. The kitchen is an area equipped with a sink, refrigerator, a cooking appliance, adequate space for food preparation, and storage space for utensils and supplies. The cooking appliance must be a stove, microwave, or built-in surface unit. The cooking appliance must be able to be removed or disconnected.

(C) Bathroom. The bathroom must be a separate room in the individual's living area with a toilet, sink, and an accessible bath.

(2) Residential care apartment. A residential care apartment setting is a living unit that is a private space with connected sleeping, kitchen, and bathroom areas and adequate storage space. The bedroom must be double occupancy. The living unit must have private kitchen and bath facilities.

(A) Size. Residential care apartments must have a minimum of 350 square feet of space per client. Indoor common areas used by Texas Department of Human Services (DHS) clients must be included in computing the minimum square footage. The portion of the common area allocated must not exceed usable square footage divided by the maximum number of individuals who have access to the common areas.

(B) Kitchen. The kitchen is an area equipped with a sink, refrigerator, a cooking appliance, adequate space for food preparation, and storage space for utensils and supplies. The cooking appliance must be a stove, microwave, or built-in surface unit. The cooking appliance must be able to be removed or disconnected.

(C) Bathroom. The bathroom must contain a toilet, sink, and an accessible bath.

(3) Residential care non-apartment. A residential care non-apartment setting is a living unit that does not meet either the definition of an assisted living apartment or a residential care apartment. A residential care non-apartment must be double occupancy.

(A) The facility that specifies the residential care non-apartment setting must be a freestanding building not physically attached to another licensed facility.

(B) The facility must be licensed as an assisted living facility with a capacity of 16 or fewer beds.

(4) Personal Care 3. A Personal Care 3 setting is only available in the Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) Program, and must meet the following qualifications:

(A) The facility must be licensed for four to 16 beds in a residential care non-apartment setting.

(B) The facility must provide 60% or more of its CBA clients with a single occupancy bedroom.

(C) The facility must maintain a minimum staffing ratio of one direct care staff member for every:

(i) four clients, including private pay clients, during the day and evening shifts; and

(ii) eight clients, including private pay clients, during the night shift.

(D) Sixty percent or more of the total clients served each month must require one-to-one staff assistance. One-to-one assistance is determined by a value of three or more on the DHS Client Assessment, Review, and Evaluation form in one or more of the following activities of daily living:

(i) transferring;

(ii) eating; or

(iii) toileting.

(b) Occupancy. The facility must provide each client with a private (singe occupancy) or semi-private (double occupancy) living unit.

§46.15. Additional Services and Fees.

(a) The facility may charge the client or the client's representative for additional items or services that the Texas Department of Human Services (DHS) does not require the facility to provide. The client or the client's representative must request and approve the additional items or services in writing.

(b) The facility must not charge the client or the client's representative for any service provided to the client as required by its contract with DHS.

(c) The facility must inform the client or the client's representative of the additional items or services and the charges for those items or services at the following times:

(1) at admission;

(2) before a change in the additional items, services, or charges; and

(3) when the client requests the additional items or services.

(d) The facility may charge the client or the client's representative for additional items or services, including:

(1) private telephone;

(2) television and/or radio for personal use;

(3) cable television services;

(4) personal comfort items, including smoking materials, notions and novelties, and confections;

(5) cosmetics and grooming items and services in excess of those required;

(6) personal clothing;

(7) personal reading material;

(8) gifts purchased on behalf of a client;

(9) flowers and plants;

(10) social events and entertainment outside the scope of the required activities program;

(11) the cost of being a single occupant in a double occupancy room, except for:

(A) a therapeutically required single occupancy room, such as isolation for infection control; or

(B) services provided in the assisted living apartment setting, as defined in §46.13(a)(1) of this chapter (relating to Housing Options);

(12) specially prepared or alternative food requested instead of the food generally prepared by the facility;

(13) the actual amount of the fee charged by the bank for checks written by the client or the client's representative that are returned for non-sufficient funds;

(14) charges for damage to the facility beyond expected wear and tear. The facility must not charge a security/damage deposit to DHS clients; and

(15) pet deposit. A pet deposit does not apply to service animals. A service animal is any guide dog, signal dog, or other animal trained to provide assistance to an individual with a disability.

§46.17. Termination of Contract.

(a) General requirements for termination. The Texas Department of Human Services (DHS) will terminate the facility's contract as described in Chapter 49 of this title (relating to Contracting for Community Care Services) or as otherwise described in this chapter or the facility's contract with DHS.

(b) Physical location. DHS will terminate the facility's contract if the facility loses the right to occupy the physical premises identified as the service delivery location. The contract termination is effective on the date the facility loses its right to occupy the physical premises, unless DHS notifies the facility of a later termination date. DHS will not pay for services provided after the termination date.

(c) Payment suspension. DHS may suspend the facility's payments if the contract is terminated for any reason at any time other than the last day of a month. Payments will remain suspended until the facility has refunded all unearned copayment and room and board payments and all trust fund balances to all clients served.

§46.19. Recordkeeping.

(a) General documentation requirements. The facility must maintain the documentation described in Chapter 49 of this title (relating to Contracting for Community Care Services).

(b) Record retention requirements. The facility must retain records for the time periods described in §69.205 of this title (relating to Contractor's Records).

(c) Daily service delivery documentation. The facility must document the client's daily service delivery.

(1) The daily service delivery documentation must contain the:

(A) client name;

(B) facility vendor number issued by Texas Department of Human Services (DHS);

(C) coverage period of the daily service delivery documentation;

(D) tasks assigned;

(E) tasks performed during the coverage period;

(F) signature of the facility manager or supervisor; and

(G) date of signature of the facility manager or supervisor.

(2) The daily service delivery documentation must be on a single document. If services delivered during the coverage period

exceed the space on the single document, the facility may use multiple pages. The daily service delivery document must clearly indicate the number of pages used for the coverage period.

(d) Daily census documentation. The facility must document the daily census of clients.

(1) The daily census documentation must contain the:

(A) name of the facility;

(B) facility vendor number issued by DHS;

(C) coverage period of the daily census documentation;

(D) name of each client served during the coverage period;

(E) daily status of each client for each day during the coverage period. Types of daily status are:

(i) admission;

(ii) discharge;

(iii) present;

(iv) personal leave;

(v) institutional leave;

(vi) emergency care (emergency care applies only to the Community Care for Aged and Disabled (CCAD) Residential Care (RC) program); and

(vii) ineligible emergency care (ineligible emergency care applies only to the CCAD RC program);

(F) total of each type of daily status during the coverage period;

(G) signature of the authorized timekeeper; and

(H) date of the authorized timekeeper's signature.

(2) The daily census documentation must be on a single document. If the number of clients served during the coverage period exceeds the space on the single document, the facility may use multiple pages. The daily census document must clearly indicate the number of pages used for the coverage period.

(e) Financial records. The facility must maintain financial records:

(1) to support its billings to DHS for payment under §46.21 of this chapter (relating to Reimbursement);

(2) to document reimbursements made by DHS. The documentation must include:

(A) amount of reimbursement;

(B) voucher number;

(C) warrant number;

(D) date of receipt; and

(E) any other information necessary to trace deposits of reimbursements and payments made from the reimbursements in the facility's accounting system.

(3) in accordance with generally accepted accounting principles (GAAP) and DHS procedures. A facility's financial records must include but are not limited to the following:

(A) deposit slips, bank statements, cancelled checks, and receipts;

(B) purchase orders;

(C) invoices;

(D) journals and ledgers;

(E) timesheets and payroll and tax records;

(F) inventory records for food and other supplies;

(G) Internal Revenue Service, Department of Labor, and other government records and forms;

(H) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and worker's compensation);

(I) equipment inventory records;

(J) records of the facility's internal accounting procedures;

(K) chart of accounts, as defined by GAAP; and

(L) records of the facility's company policies.

(f) Subcontractor records. If a provider agency utilizes a subcontractor, the provider agency must maintain records of the subcontractor's activities. Maintenance of all records to support subcontractor claims is the responsibility of the provider agency.

(g) Registered nurse access. The facility must allow the home and community support services agency's registered nurse access to the client's medical and service plan records for use in the assessment.

§46.21. Reimbursement.

(a) The facility must bill for services provided as described in Chapter 49 of this title (relating to Contracting for Community Care Services).

(b) The Texas Department of Human Services (DHS) will pay for eligible services provided and billed in compliance with this chapter.

(c) A unit of service is one billable day of authorized service delivered to a client.

(d) The facility must agree to accept the unit rate authorized by DHS, plus any applicable room and board payments, as payment in full for services required by DHS.

(e) The unit rate reimbursed by DHS includes any copayment. The combined reimbursement from DHS and the client or the client's representative for the required services described in §46.41 of this chapter (relating to Required Services) must not exceed the unit rate plus room and board specified for each type of setting. The unit rate does not include charges for services described in §46.15 of this chapter (relating to Additional Services and Fees).

(f) The facility must deduct the copayment amount from reimbursement claims submitted to DHS.

(g) The facility must not bill DHS for the day of discharge, unless the discharge is due to the death of the client.

(h) The facility must bill the double occupancy (Residential Care Apartment) rate for clients in the single occupancy (Assisted Living Apartment) setting who request double occupancy.

(i) The facility must bill DHS for the balance of the bedhold charge for any clients whose daily copayment is less than the maximum bedhold charge allowed by DHS.

(1) The facility must determine the client's daily copayment amount by dividing the client's monthly copayment charge by the number of days in the month.

(2) The facility must deduct the client's daily copayment amount from the bedhold rate and submit the claim to DHS.

(3) This subsection does not apply to the Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) Program.

(j) The facility may bill DHS for emergency care provided to clients for:

(1) up 60 days per authorization for eligible clients; or

(2) five days for a client ineligible for emergency care.

(k) The facility must not bill for services provided before or after the authorized effective dates for CBA AL/RC or Community Care for Aged and Disabled (CCAD) Residential Care (RC) services, as those dates are determined by DHS.

(l) When the facility requests a Texas Index of Level of Effort (TILE) reset, the facility may bill DHS at the new TILE level effective the date of the TILE assessment. The facility may request only two TILE resets during each calendar year for each CBA client for the following time periods:

(1) January through June; and

(2) July through December.

(m) CCAD RC services will be reimbursed at the double occupancy rate, regardless of the actual occupancy.

§46.23. Monitoring Reviews.

Monitoring reviews are conducted through an on-site review and in accordance with Chapter 49 of this title (relating to Contracting for Community Care Services). The Texas Department of Human Services (DHS) reviews records on a regular and systematic basis, and as often as DHS deems necessary. DHS conducts the following types of monitoring:

(1) Compliance monitoring. Compliance monitoring is a review to determine if the facility is delivering services according to the rules in this chapter. Compliance monitoring includes:

(A) review of consumer satisfaction surveys conducted;

(B) review of client records;

(C) interviews with clients and staff;

(D) observation of clients and staff; and

(E) consultations with others as appropriate.

(2) Fiscal monitoring. Fiscal monitoring is a review of documentation that supports the facility's billing. The facility is liable for recoupment of payment if monitoring errors indicate the monthly claims do not correspond with the daily census documentation and daily service delivery documentation. Fiscal monitoring includes:

(A) Financial errors. DHS applies the error to the entire unit of service. Financial errors include:

(i) The facility is reimbursed for services, but the daily census documentation and the daily service delivery documentation are missing for the period for which services are reimbursed. DHS applies the error to the total number of units reimbursed for the billing period for which forms are missing.

(ii) The facility is reimbursed for units that exceed the units recorded on daily census documentation and daily service delivery documentation. DHS applies the error to the total number of units reimbursed in excess of units recorded.

(iii) The facility is reimbursed for units of service and the client did not receive services. DHS applies the error to the total number of units reimbursed for the days the client did not receive services.

(iv) The facility is reimbursed for units of service and the client was Medicaid ineligible. DHS applies the error to the total number of units reimbursed for the days the client was Medicaid ineligible. This does not apply to the Community Care for Aged and Disabled (CCAD) Residential Care (RC) program.

(B) Administrative errors. Documentation is reviewed for administrative errors as they exist at the time DHS staff arrive to conduct the monitoring review. DHS applies the error to the administrative portion of the unit of service. The administrative portion is 12% of the paid unit rate. Administrative errors include:

(i) The facility enters a date of signature on the daily census documentation that is before the date the last day services are provided. DHS applies the error to the total number of units reimbursed after the signature date.

(ii) The facility fails to sign the daily census documentation. DHS applies the error to the total number of units reimbursed on the unsigned form.

(iii) The facility fails to enter a date of signature on the daily census documentation to certify total number of units provided to the client. DHS applies the error to the number of units reimbursed on the undated form.

(iv) The facility corrects the date of signature on the daily census documentation, but fails to initial the correction. DHS applies the error to the total number of units reimbursed after the earliest signature date.

(v) The facility uses a signature stamp on the daily census documentation, but fails to initial the stamped signature. DHS applies the error to the total number of units reimbursed on the signature stamped form.

(vi) The facility makes an illegible entry or illegible correction to any portion of the record of time on the daily census documentation. DHS applies the error to the total number of units reimbursed for the days in which entries are illegible.

(vii) The facility enters an illegible date of signature or makes an illegible correction to the date of signature on the daily census documentation. DHS applies the error to the total number of units on the form.

(viii) The facility fails to complete the entire daily census documentation in ink, as described in §49.11(d) of this title (relating to Record Documentation Requirements). DHS applies the error to the total number of units reimbursed that were not completed in ink.

(ix) The facility uses a method other than crossing out and initialing to change an entry on the daily census documentation. DHS applies the error to the total number of units reimbursed that were corrected in a manner other than crossing out and initialing.

(x) The facility fails to list the client on the daily census documentation, but the client was listed on the daily service delivery documentation. DHS applies the error to the total number of units reimbursed for the period the client was left off the daily census documentation.

(xi) The facility leaves the daily status blank on the daily census documentation, but daily activity can be verified on the daily service delivery documentation. DHS applies the error to the total number of units reimbursed for which the daily status is left blank on the daily census documentation.

§46.25. Complaints.

A facility must comply with the complaint procedures described in §49.13 of this title (relating to Client Rights and Responsibilities) and §49.14 of this title (relating to Complaint Procedures).

§46.27. Reimbursement Methodology for Residential Care.

(a) General requirements. The Texas Department of Human Services (DHS), or its designee, applies the general principles of cost determination as specified in §20.101 of this title (relating to Introduction).

(b) Cost reporting.

(1) Providers must follow the cost-reporting guidelines as specified in §20.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) All contracted providers must submit a cost report unless the number of days between the date the first DHS client received services and the provider's fiscal year end is 30 days or fewer.

(3) The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. Requests to be excused from submitting a cost report must be received by the Texas Health and Human Services Commission's (HHSC) Rate Analysis department before the due date of the cost report.

(c) Reimbursement determination.

(1) Reporting and verification of allowable costs.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. DHS or its designee excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. The purpose is to ensure that the database reflects costs and other information that are necessary for the provision of services and that are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(2) Residential care reimbursement. Recommended per diem reimbursement for residential care is determined as follows.

(A) Reported allowable expenses are combined into four cost areas:

(i) attendant;

(ii) other direct care;

(iii) facility; and

(iv) administration and transportation.

(B) Facility, transportation (vehicle), and administration expenses are lowered to reflect expenses for a provider at the lower of:

(i) 85% occupancy rate; or

(ii) the overall average occupancy rate for licensed beds in facilities included in the database during the cost-reporting periods included in the base. The occupancy adjustment is applied if the provider's occupancy rate is below 85% or the overall average, whichever is lower. The occupancy adjustment is determined by the individual provider occupancy rate being divided by .85 or the average occupancy rate of all providers in the database.

(C) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes and employee benefits are Federal Insurance Contributions Act or Social Security, Medicare contributions, Workers' Compensation Insurance, the Federal Unemployment Tax Act, and the Texas Unemployment Compensation Act.

(D) Allowable salaries paid to the director, administrator, assistant administrator, owner, or partner who works for the Residential Care contracted provider may be limited to the 90th percentile of an array of salary costs for the director, administrator, assistant administrator, owner, or partner.

(E) The attendant cost area from subparagraph (A)(i) of this paragraph will be calculated as specified in §20.112 of this title (relating to Attendant Compensation Rate Enhancement).

(F) The following applies to the cost areas from subparagraph (A)(ii) - (iv) of this paragraph:

(i) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §20.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(ii) Cost area per diem expenses are calculated by dividing total reported allowable costs for each cost area by the total days of service. Cost area per diem expenses are rank ordered from low to high to produce projected per diem expense arrays.

(iii) Reimbursement is determined by selecting from each cost area the median day of service and the corresponding per diem expense times 1.07. The resulting cost area amounts are totaled to determine the per diem reimbursement.

(iv) The client is required to pay the room and board portion of the per diem reimbursement. DHS will pay the services portion of the per diem reimbursement.

(3) Exceptions to the reimbursement determination methodology. Reimbursement may be adjusted in accordance with §20.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs) when new legislation, regulations, or economic factors affect costs.

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §20.101 of this title.

(e) Allowable and unallowable costs. In determining whether a cost is allowable or unallowable, providers must follow the guidelines as specified in §20.102 of this title (relating to General Principles of Allowable and Unallowable Costs) and §20.103 of this title (relating to Specifications for Allowable and Unallowable Costs). In addition to these sections, the following allowable and unallowable costs are applicable in the Community Care for Aged and Disabled Residential Care program.

(1) Allowable costs. Medical supplies required to provide residential care services are allowable. Allowable medical costs include supply costs associated with the administration of medications, such as medication cups, syringes for insulin injections, stethoscopes, blood pressure cuffs, and thermometers.

(2) Unallowable costs. Unallowable costs include prescription drugs; non-legend drugs; medical records costs; and compensation for physicians, pharmacists, and medical directors.

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §20.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports of all contracted providers. The frequency and nature of the field audit are determined by DHS or its designee to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §20.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §20.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §20.110 of this title (relating to Informal Reviews and Formal Appeals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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SUBCHAPTER C. PROVIDER REQUIREMENTS

40 TAC §§46.31, 46.33, 46.35, 46.37, 46.39, 46.41, 46.43, 46.45, 46.47, 46.49, 46.51, 46.53

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.31. Staff Requirements.

The facility must have staff as described in §92.41 of this title (relating to Standards for Type A, Type B, and Type E Assisted Living Facilities).

§46.33. Staff Training.

(a) General training requirements. The facility must provide all staff with training as described in §92.41 of this title (relating to Standards for Type A, Type B, and Type E Assisted Living Facilities).

(b) Facility manager. In addition to the requirements described in subsection (a) of this section, the facility must train the facility manager on the following topics:

(1) facility requirements for the Community Care for Aged and Disabled (CCAD) Residential Care (RC) or Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) programs or both, as applicable; and

(2) client characteristics and needs.

(c) Attendants. In addition to the requirements described in subsection (a) of this section, the facility must train the attendant in performing the tasks identified on the service plan described in §46.39(d) of this chapter (relating to Service Initiation).

(d) Training of new staff. The facility must provide training to new staff hired after the initial orientation described in §49.3(b) of this title (relating to General Contractual Requirements).

§46.35. Interdisciplinary Team.

(a) Interdisciplinary Team (IDT).

(1) The IDT is a designated group that includes the following individuals who meet when the need arises to discuss service delivery issues:

(A) the client or the client's representative, or both;

(B) a facility representative;

(C) the case manager or the case manager's designee;

(D) the regional nurse or contract manager, or both; and

(E) other persons as necessary.

(2) The facility must convene an IDT Meeting within three working days of the date the facility identifies a service delivery issue.

(b) IDT meeting.

(1) The IDT meeting may be conducted by telephone conference call or in person.

(2) The IDT must:

(A) evaluate the issue;

(B) identify any solutions to resolve the issue; and

(C) make recommendations to the facility.

(c) IDT meeting outcome. The facility must do one of the following within two working days after the IDT meeting:

(1) implement the recommendations of the IDT; or

(2) discharge the client from the facility and refer the case back to the case manager for referral to another facility.

(d) Documentation of the IDT meeting. The facility must document the IDT meeting in the client file, including the:

(1) specific reasons for calling the IDT meeting;

(2) recommendations of the IDT;

(3) efforts made to resolve the issue;

(4) facility's action as a result of the IDT recommendations; and

(5) reasons for the facility's actions.

§46.37. Copayment and Room and Board.

(a) Amount. The facility must collect the copayment and room and board amounts indicated on the Texas Department of Human Services' (DHS's) Notification of Community Care Services form or DHS's Notification of Community Based Alternatives (CBA) Services form. This subsection does not apply to clients who receive Community Care for Aged and Disabled emergency care service.

(b) Due date.

(1) The facility must designate a due date for copayment and room and board in writing. The due date must be during the same month the copayment and room and board is applied.

(2) The facility must collect the entire copayment and room and board on or before the due date. If the due date falls on a weekend or a holiday, the facility must collect the entire copayment and room and board on or before the first working day thereafter.

(3) If the client or the client's representative fails to pay the entire copayment and room and board by the due date, the facility must notify the client or the client's representative and the case manager in writing no later than the first working day after the due date.

(c) Credit balances.

(1) A credit balance is an amount due to the client or the client's representative when there is an overpayment by the client or the client's representative.

(2) The facility must handle credit balances as follows:

(A) The facility must contact the client or the client's representative within 14 days of receipt of the payment resulting in a credit balance.

(B) The facility must refund the credit balance the month the facility receives the payment that results in a credit balance, and offer the client or the client's representative the following options:

(i) the client or the client's representative provides the corrected payment, and the facility returns the original payment;

(ii) the facility provides the client or the client's representative with a refund of the credit balance; or

(iii) the client or the client's representative has the credit balance applied to the following month's payment. If the client or the client's representative pays an incorrect amount the following month, the facility must issue a refund check for the credit balance within 14 days of receipt of the second incorrect payment.

(d) Copayment and room and board receipts.

(1) The facility must provide receipts for all copayment and room and board payments received from or on behalf of clients at the time the payment is received.

(2) The facility must keep a copy of all copayment and room and board receipts.

(3) Copayment and room and board receipts must contain the following in any format:

(A) the name of the client;

(B) the month, day, and year the payment was received;

(C) the total amount collected;

(D) the specific amounts of copayment and room and board collected; and

(E) the month and year of the coverage period for the payment received.

(e) Copayment and room and board ledger. The facility must maintain a copayment and room and board ledger system in any format for each client.

(1) The facility may keep the copayment and room and board ledger systems as separate ledgers, or the facility may combine both ledgers into a single ledger system. If the facility chooses to keep a single ledger system, a separate entry must be made for each copayment and room and board entry.

(2) The copayment and room and board ledger system must reflect the following:

(A) all charges for copayment and room and board by client;

(B) all payments for copayment and room and board made by or on behalf of a client;

(C) all credits for copayment and room and board by client, including the:

(i) specific amount credited;

(ii) month and year of the coverage period of the credit;

(iii) type of payment credited; and

(iv) reason for the credit; and

(D) a running balance by client.

(3) The facility must record all activities on the copayment and room and board ledger system within 14 days of occurrence.

(4) The copayment and room and board ledger must be maintained in accordance with generally accepted accounting principles (GAAP).

(f) Refunds upon discharge. The facility must refund the client's copayment and room and board for the remaining days of the month following the date of discharge or death. The refund must be made within five working days of awareness that the client will be discharged or is deceased.

§46.39. Service Initiation.

(a) Negotiated move-in date. The facility must negotiate a move-in date with the Texas Department of Human Services (DHS) case manager and the client or the client's representative.

(b) Reserved space. The facility must reserve a living unit for three days from the agreed upon move-in date for each referred client. The facility may request another referral after three days if the move-in date is not re-negotiated.

(c) Client and facility agreement. The facility must have a written agreement with the client or the client's representative. Both parties must sign the written agreement before or at the time of admission. The written agreement must include the following:

(1) bedhold policies for hospital and nursing facility stays;

(2) personal leave policies and charges;

(3) eviction procedures;

(4) all available services in the facility; and

(5) charges for services not paid by DHS and charges not included in the facility's basic daily rate, as described in §46.15 of this chapter (relating to Additional Services and Fees).

(d) Health assessment and service plan.

(1) The facility must complete a health assessment and develop an individual service plan as described in §92.41(c) of this title (relating to Standards for Type A, Type B, and Type E Assisted Living Facilities).

(2) In addition to the items described in §92.41(c) of this title, the health assessment developed by the facility must contain the following items:

(A) vision patterns;

(B) skin conditions;

(C) body control problems; and

(D) vital signs, height, and weight.

(3) The health assessment and individual service plan must be completed:

(A) within 72 hours of admission to the facility; and

(B) by the appropriate facility staff.

(i) The facility manager or facility nurse must complete the health assessment and individual service plan.

(ii) The facility nurse must complete the medication administration portion of the health assessment for Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) clients. If the facility nurse is a licensed vocational nurse (LVN), the facility must have a registered nurse (RN) consultant to sign off on the medication administration portion of the health assessment.

§46.41. Required Services.

(a) Service delivery. The facility must provide services according to the service plan completed for the client.

(b) Required services. Services include:

(1) Personal care. The facility must provide or assist with personal care services identified on the service plan completed for the client. Personal care services are activities related to the care of the client's physical health that include at a minimum:

(A) bathing;

(B) dressing;

(C) grooming;

(D) routine hair and skin care;

(E) exercising;

(F) toileting;

(G) medication administration, including injections. This does not apply to the Community Care for Aged and Disabled (CCAD) Residential Care (RC) Program;

(H) transferring/ambulating. This does not apply to clients residing in a Type A assisted living facility;

(I) twenty-four-hour supervision. The facility must conduct and document in the client file checks or visits to each client to ensure that each client is safe and well. The checks or visits must be made as identified on the service plan completed for the client; and

(J) meal services. The facility must:

(i) provide meal services as described in §92.41(m) of this title (relating to Standards for Type A, Type B, and Type E Assisted Living Facilities);

(ii) offer dietary counseling and nutrition education to the client;

(iii) modify food texture, including:

(I) chopping, grinding, and mashing foods for clients who have trouble chewing; and

(II) cutting up food into bite size pieces for clients who have trouble cutting food; and

(iv) assist with eating, including:

(I) assistance with spoon-feeding in instances when the client is temporarily ill;

(II) bread buttering; and

(III) opening containers or pouring liquids for clients with hand deformities, paralysis, or hand tremors.

(2) Home management. The facility must provide or assist with activities related to housekeeping that are essential to the client's health and comfort, including:

(A) changing bed linens;

(B) housecleaning;

(C) laundering;

(D) shopping;

(E) storing purchased items in the client's living unit. This includes medical supplies delivered to Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) clients; and

(F) washing dishes.

(3) Transportation and escort.

(A) The facility must provide the client with transportation, escort, or both to:

(i) local community areas where a client may purchase items to meet his or her personal needs or conduct personal business according to the facility's published schedule;

(ii) recreational activities, field/community trips according to the facility's published schedule; and

(iii) the nearest available medical provider for medical appointments, therapies, and other medical care.

(B) The facility must make arrangements for other transportation for the client to the medical care provider of the client's choice if the client's medical provider is not the nearest available provider.

(4) Social and recreational activities. The facility must provide a minimum of four scheduled social and recreational activities per week.

(A) Activity requirements. The social and recreational activities must be:

(i) planned to meet the social needs and interests of the clients; and

(ii) listed on a monthly calendar that is posted in plain view at the facility at least one week in advance.

(B) Types of activities. Social and recreational activities include:

(i) activities that require group and client-initiated activities;

(ii) opportunities to interact with other people;

(iii) interaction, cultural enrichment, educational, or recreational activities; and

(iv) other social activities on site or in the community.

(5) Participation in the client assessment. The facility must designate someone who is familiar with the CBA AL/RC client's needs and service plan to participate with the client's assessment. The assessment will determine the Texas Index of Level of Effort (TILE) at both the annual assessment, and a requested re-TILE. Participation in the client assessment does not apply to the CCAD RC Program.

(6) Emergency care. The facility must provide emergency care as authorized by the case manager.

(A) Emergency care is assisted living services provided to clients while the case manager seeks a permanent living arrangement.

(B) Emergency care services do not apply to the CBA AL/RC program.

§46.43. Service Plan Changes.

(a) The facility must complete a new service plan anytime there is a need for a change in the client's service plan.

(b) The facility must implement service plan changes within seven days from the assessment date.

§46.45. Required Notifications.

(a) The facility must notify the Texas Department of Human Services (DHS) when one of the following happens:

(1) significant changes in the client's health and/or condition;

(2) the client temporarily enters an institution;

(3) serious occurrences or emergencies involving the client or facility staff;

(4) the client or the client's representative requests that services end;

(5) the client refuses to comply with the service plan;

(6) the client engages in discrimination in violation of applicable law;

(7) the client or the client's representative fails to pay copayment;

(8) the client uses ten personal leave days in the current calendar year;

(9) the client or the client's representative requests to move to another facility; or

(10) when the facility believes that a client's functional needs have changed such that it will impact the client's Texas Index of Level of Effort (TILE). This only applies to facilities providing assisted living services under the Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) Program that participate in the attendant compensation rate option.

(b) The facility must notify the client's DHS case manager orally or by facsimile about the change no later than one DHS workday after the change happens. If the facility's first notification is oral, the facility must send written notification to the case manager within five working days of the initial notification.

§46.47. Suspension of Services.

(a) The facility must suspend services when one of the following happens:

(1) the client dies;

(2) the client moves from the facility;

(3) the client is discharged because he threatens the health or safety of himself or other clients in the facility;

(4) the client is permanently admitted to an institution;

(5) the Texas Department of Human Services (DHS) enforces sanctions against the facility by terminating the contract;

(6) the client's eligibility is denied; or

(7) the case manager requests that services be suspended or terminated.

(b) The facility must notify the client's DHS case manager orally or by facsimile about the suspension no later than one DHS workday after services are suspended. If the facility's first notification is oral, the facility must send written notification to the case manager within five working days of the initial notification.

§46.49. Institutional Leave.

(a) Institution. An institution is defined as a hospital, nursing facility, state school, state hospital, or intermediate care facility serving persons with mental retardation or a related condition.

(b) Institutional leave. Institutional leave is when clients are absent from the facility because they temporarily enter an institution.

(c) Bedhold. The facility must hold the client's bed:

(1) for a Community Care for Aged and Disabled (CCAD) Residential Care (RC) client for:

(A) 60 days if the client is in a hospital; or

(B) 30 days if the client is in any other type of institution; and

(2) for a Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) client for 60 days if the client is in any type of institution.

(d) Bedhold charges. The facility must charge the client or the client's representative for bedhold during institutional leave.

(1) Bedhold charges for a CCAD RC client are the bedhold rate established by the Texas Department of Human Services (DHS), plus room and board charges.

(2) Bedhold charges for a CBA AL/RC client are the room and board charges.

(e) Refund of copayment. The facility must not charge the client or the client's representative more than the maximum amount allowed by DHS for bedhold. The facility must refund the client's copayment for the days the client uses institutional leave.

(1) The facility must refund any copayment paid by a CCAD RC client or the client's representative that is in excess of the bedhold amount. If the client's copayment amount is less than the bedhold charge, DHS pays the difference as described in §46.21 of this chapter (relating to Reimbursement).

(2) The facility must refund all copayments paid by a CBA AL/RC client or the client's representative.

(3) The refund must be made according to the procedures in §46.37(c) of this chapter (relating to Copayment and Room and Board).

(f) Billing during institutional leave. The facility must charge the client or the client's representative only the bedhold amount for the date of admission to an institution. The facility must charge the client or the client's representative the full rate for date of return.

(g) Notification of institutional leave. The facility must notify the DHS case manager of any institutional leave as described in §46.45 of this chapter (relating to Required Notifications).

§46.51. Personal Leave.

(a) Personal leave. A client is entitled to 14 days of personal leave per calendar year.

(b) Client charges. The facility must collect the entire copayment and room and board charges for all personal leave days.

(c) Texas Department of Human Services (DHS) payment during personal leave. The facility must not bill DHS for more than 14 days of personal leave taken by the client each calendar year.

(d) Notification of personal leave days. The facility must notify the DHS case manager of personal leave days as described under §46.45 of this chapter (relating to Required Notifications).

(e) Charge for exceeding personal leave days. The client is responsible for all charges for services if he exceeds the allowable limit of personal leave days.

§46.53. Client Terminations.

(a) Client discharge. The facility must convene an Interdisciplinary Team (IDT) meeting, as described in §46.35 of this chapter (relating to Interdisciplinary Team) before discharging a client, except when the client threatens the health or safety of others or himself. The facility must notify the DHS case manager as described under §46.47 of this chapter (relating to Suspension of Services).

(b) Assistance with move. The facility must help the client prepare for transfer or discharge.

(c) Refunds. The facility must refund the following:

(1) copayment and room and board, as described in §46.37(f) of this chapter (relating to Copayment and Room and Board); and

(2) trust fund balances, as described in §46.71 of this chapter (relating to Trust Fund Procedures for Client Discharge).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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SUBCHAPTER D. TRUST FUNDS

40 TAC §§46.61, 46.63, 46.65, 46.67, 46.69, 46.71

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001 - 22.038 and §§32.001 - 32.053.

§46.61. Trust Fund Management.

(a) Clients have the right to:

(1) perform their own money management;

(2) request that the facility provide or assist with money management; or

(3) designate another person to provide or assist with money management.

(b) The case manager will inform the facility if a client wishes the facility to provide or assist with money management.

(c) The facility must not require clients to request the facility provide or assist with money management. The facility must have the client's or the client's representative's written authorization to provide or assist with money management.

(d) The facility must provide a written statement of the trust fund rights and responsibilities regarding the client's financial affairs. The written statement must:

(1) be provided to each client or client's representative who chooses to have the facility provide or assist with money management;

(2) be provided at the time of admission or request; and

(3) include the following:

(A) a statement that the facility must not require clients to allow the facility to provide or assist with money management;

(B) the client or the client's representative's written request and authorization to provide or assist with money management; and

(C) any charge by the facility for providing or assisting with money management is included in the facility's basic rate.

§46.63. Trust Fund Bank Account.

(a) Bank account.

(1) The contracted assisted living facility must keep funds received from or on behalf of a client for a trust fund in a separate bank account from the facility's operating funds. The account must be identified as "Trustee, (Name of Facility), Client's Trust Fund Account."

(2) The facility may use the following type of checking accounts for the trust fund:

(A) a pooled checking account, which is a single checking account that contains all the personal funds received from each client utilizing the trust fund;

(B) a client-choice individual checking account, which is a single checking account that contains only the personal funds of a single client. The client or the client's representative must request this type of trust fund in writing; or

(C) a facility-choice individual checking account, which is a single checking account that contains only the funds of a single client. This type of trust fund is set up for the convenience of the facility.

(b) Commingled funds. A facility may commingle the trust funds of private-pay clients and Texas Department of Human Services (DHS) clients.

(1) Each private-pay client or the client's representative whose funds are commingled with DHS client funds must sign and date a permission form upon admission or at the time of request for trust fund services. The permission form must include:

(A) permission for the facility to commingle the personal funds of the private pay client with DHS clients;

(B) permission for the facility to maintain trust fund records of private-pay clients in the same manner as the DHS client's trust fund records; and

(C) a provision allowing inspection of the private-pay client's trust fund records by DHS staff.

(2) The facility must keep financial records of private pay clients with commingled funds in the same manner as the financial records of DHS clients as specified in this chapter.

(c) Banking charges.

(1) The facility is responsible for bank fees for the trust fund kept in a pooled checking account or in facility-choice individual checking accounts. The facility must not charge these fees to the client or the client's representative. The facility may report these fees as allowable costs on its cost report.

(2) The client or the client's representative is responsible for bank fees for the trust fund kept in client-choice individual checking accounts.

(3) The facility must not charge the client or the client's representative for the administrative handling of any allowable type of checking account. The facility may report these costs on its cost report.

(d) Interest earned. The facility must distribute the interest earned on the pooled checking account, if the pooled checking account is interest-bearing, to all clients utilizing the trust fund. The facility must prorate the actual interest earned to each client's account:

(1) at the time the financial institution pays the interest; and

(2) on the basis of the client's balance at the time the financial institution pays the interest.

§46.65. Trust Fund Transactions.

(a) Transactions.

(1) The facility must keep records of all trust fund transactions.

(2) Facility staff must record on the client's trust-fund ledger or deposit/withdrawal document at least the following:

(A) the date and amount of each deposit;

(B) the source of each deposit;

(C) the date and amount of each withdrawal;

(D) the reason for each withdrawal;

(E) the name of the person or entity who accepted the withdrawn funds; and

(F) the balance after each transaction.

(3) The client or the client's representative must sign for each withdrawal transaction at the time of the transaction.

(A) The signature must be on the trust-fund ledger, deposit/withdrawal document, or trust fund receipt.

(B) At least one witness must sign for each withdrawal transaction if the client or the client's representative cannot sign.

(C) A signature is not required if the payment meets the definition of a recurring payment as described in subsection (c) of this section.

(4) The facility must record transactions within 14 days of occurrence.

(b) Bulk purchases. The facility may make bulk purchases for items used by multiple clients.

(1) The bulk purchase must be traceable to individual clients.

(2) The receipt for the bulk purchase must show the following:

(A) the names of the clients for whom the purchase was made; and

(B) the portion of the total price charged to each client.

(3) The facility must not charge the client or the client's representative more than the actual cost of the client's portion of items that are purchased in bulk.

(c) Recurring payments.

(1) The facility must obtain the client's or the client's representative's written request and authorization to make recurring payments on behalf of the client. The written authorization must include the:

(A) name of the business or entity to which the recurring payment is made;

(B) amount of the recurring payment. If the recurring payment is not a set amount, the authorization must include the method for determining the amount of the recurring payment;

(C) date the payment will begin; and

(D) signature and signature date of the client or the client's representative.

(2) The client or the client's representative must request and authorize the facility to stop recurring payments on behalf of the client.

(A) The authorization may be oral or written.

(B) The facility must document the request, including the:

(i) name of the business or entity to which the recurring payment is made; and

(ii) date the payment will stop.

(3) The facility is not required to have a receipt for recurring payments made on behalf of the client.

(d) Petty cash fund.

(1) A petty cash fund is part of the pooled checking account trust fund kept on hand in cash by the facility. The petty cash fund is used for disbursement to clients for the purchase of minor items.

(2) The facility must keep the petty cash fund locked.

(3) The facility must set a dollar limit for petty cash transactions.

(A) The facility must document:

(i) the dollar limit of petty cash transactions; and

(ii) a list of any exceptions to the petty cash transaction limit, if applicable.

(B) The facility must follow the procedures in subsection (a) of this section for withdrawals that exceed the petty cash transaction limit.

(4) The facility must keep records of all petty cash fund transactions. The petty cash fund record must be a:

(A) petty cash fund ledger; or

(B) petty cash fund receipt.

(5) A petty cash fund ledger or receipt must include the:

(A) name of the client;

(B) date of the withdrawal;

(C) amount of the withdrawal; and

(D) signature of client or the client's representative, or at least one witness if the client or the client's representative cannot sign.

(6) The facility must use the following guidelines to replenish the petty cash fund:

(A) Count the money in the petty cash fund.

(B) Determine the difference between amount in the petty cash fund and the amount needed in the petty cash fund.

(C) Cash a check for the difference between the amount in the petty cash fund and the amount needed in the petty cash fund.

(i) Write the check for cash on the appropriate checking account, either the:

(I) pooled trust fund checking account; or

(II) individual client trust fund checking account.

(ii) Indicate "petty cash fund" in the "memo" line of the check.

(D) Put the cash in the petty cash fund.

(7) The facility must reconcile the petty cash fund at least once every 14 days.

(8) The facility must follow the requirements for transactions in subsection (a) of this section to post petty cash fund transactions to the trust fund ledger. However, the client's or the client's representative's signature is not required on the trust fund ledger or trust fund receipt if the client's or the client's representative's signature is on the petty cash fund ledger or receipt.

(e) Receipts.

(1) A trust fund receipt is required when a direct payment is made from the client's trust fund. The facility may use printed receipts from vendors as trust fund receipts only if:

(A) all elements from paragraph (4) of this subsection are present; or

(B) any missing elements from paragraph (4) of this subsection are added.

(2) A trust fund receipt is required when a payment is received by the facility on behalf of a client. This is not applicable to funds direct-deposited to the trust fund account.

(3) A trust fund receipt is not required when the client or the client's representative makes a direct purchase with funds withdrawn from the trust fund. The withdrawn funds must meet the requirements listed in subsection (a) of this section.

(4) A trust fund receipt must contain the:

(A) name of the client;

(B) month, day, and year the receipt was written or created;

(C) total amount of money spent or received for the client;

(D) specific item(s) purchased; and

(E) name of the business or entity from which the purchase was made or the payment received.

(5) A trust fund receipt may contain the signature of the client or the client's representative for payments made from the trust fund. At least one witness must sign for each payment made if the client or the client's representative cannot sign.

(f) Limitations on withdrawals. The facility must not use the client's personal funds to purchase any item or service that the Texas Department of Human Services requires the facility to provide. The facility must purchase additional items or service with the client's personal funds only as described in §46.15 of this chapter (relating to Additional Services and Fees).

§46.67. Trust Fund Documentation.

(a) Accounting and records.

(1) The facility must keep written records of all financial transactions involving the client's personal funds that the facility is holding, safeguarding, and accounting.

(2) The facility must keep the accounting records in accordance with generally accepted accounting principles (GAAP).

(3) The facility must keep records in accordance with its fiduciary duties for client trust funds.

(4) The facility must include at least the following in the accounting records:

(A) each client's name;

(B) identification of each client's representative or person assigned to receive the client's income, if any;

(C) admission date;

(D) each client's earned interest, if any;

(E) documentation of each transaction; and

(F) receipts for purchases and payments, including cash register tapes or sales statements from a seller.

(b) Quarterly statement. The facility must provide quarterly statements to the client or the client's representative, as described in §92.125(a)(3)(L) of this title (relating to Resident's Bill of Rights and Provider Bill of Rights).

(c) Access to trust fund records.

(1) The facility must make an individual client's financial record and supporting documents available at any time during working hours to the client, the client's representative, and the Texas Department of Human Services.

(2) This review can be made without prior notification.

§46.69. Trust Fund Refunds.

(a) The facility must return the full balance of the client's personal funds held in the facility to the client or the client's representative immediately upon request if the request is made during normal business hours. For purposes of this subsection, normal business hours are 8:00 a.m. to 5:00 p.m. on working days, or at the beginning of the next normal business hours if the request is received during hours other than normal business hours.

(b) The facility must return the full balance of the client's personal funds that the facility has deposited in any bank account to the client or the client's representative within ten working days of request. This refund must include any interest accrued.

§46.71. Trust Fund Procedures for Client Discharge.

(a) Client transfer.

(1) The facility must write a check to the resident for all funds held in the pooled checking account. This must include any interest accrued.

(2) The facility must complete the transfer within ten working days of the effective date of the transfer.

(3) The facility must not make any payments out of a client's trust fund after the effective date of transfer, except as described in this subsection.

(4) The cleared check will suffice as a receipt.

(b) Client discharge.

(1) The facility must refund the discharged client's personal funds and provide a final accounting of those funds to the client or the client's representative either:

(A) in person; or

(B) by mail via certified return receipt.

(2) The facility must complete the refund and provide a final accounting within ten working days of the date of discharge, or the date of the facility's awareness of the client's discharge, whichever is later.

(3) The facility must not make any payment out of a discharged client's trust fund, except as described in this subsection.

(4) The facility must maintain the following documentation in the client's trust fund record:

(A) a copy of the final accounting of the client's personal funds;

(B) the amount refunded to the discharged client or the client's representative;

(C) the date the refund was made. The date the refund was made is either:

(i) the date the funds were refunded in person; or

(ii) the date the certified return receipt shows the refund was mailed; and

(D) the method of refund. The facility must:

(i) obtain the signature of the client or the client's representative if the refund was in cash; or

(ii) document the check number if the refund was made by check.

(c) Client death.

(1) The facility must refund the deceased client's personal funds and provide a final accounting of those funds to the beneficiary, heir, or executor of the deceased client's estate either:

(A) in person; or

(B) by mail via certified return receipt.

(2) The facility must complete the refund and provide a final accounting within 30 days of awareness of the client's death, if the beneficiary, heir, or executor is known, located, or identified. The facility must make a bona fide effort to locate the beneficiary, heir, or executor of a deceased client's estate within 30 days.

(3) The facility must not make any payments out of a deceased client's trust fund, except as described in this subsection.

(4) The facility must maintain the following documentation in the client trust fund record:

(A) a copy of the final accounting of the client's personal funds;

(B) the amount refunded to the beneficiary, heir, or executor of the deceased client's estate;

(C) the date the refund was made. The date the refund was made is either:

(i) the date the funds were refunded in person; or

(ii) the date the certified return receipt shows the refund was mailed; and

(D) the method of refund. The facility must:

(i) obtain the signature of the client or the client's representative if the refund was in cash; or

(ii) document the check number if the refund was made by check.

(5) The facility must use the following procedures to clear the client's account if it is unable to locate or identify the beneficiary, heir, or executor of a deceased client's estate within 30 days:

(A) The facility must send the personal funds of the deceased client to the Texas Department of Human Services (DHS), Fiscal Division, P.O. Box 149055, Austin, Texas 78714-9055 with the following information:

(i) the client's name;

(ii) the client's social security number; and

(iii) the amount of money being submitted to DHS for escheat.

(B) The facility must maintain the following in the client trust fund record:

(i) documentation of the facility's efforts to locate the beneficiary, heir, or executor of a deceased client's estate; and

(ii) proof of submission of the personal funds of a deceased client to DHS.

(d) Contract assignment.

(1) The assignor (the facility transferring the contract) must transfer the bank balances of the trust fund to the assignee (the facility to which the contract assignment is made) either:

(A) in person; or

(B) by mail via certified return receipt.

(2) The assignor must complete the transfer within five working days of the effective date of the contract assignment.

(3) The assignor must not make any payments out of a client's trust fund after the effective date of the contract assignment, except as described in this subsection.

(4) The assignor must provide the assignee with a list of the clients who are utilizing the trust fund and their balances.

(5) The assignee must provide the assignor with a receipt for the transfer of these funds. The receipt must contain the following elements:

(A) the date of the transfer of funds. The date the transfer was made is either the:

(i) date the funds were refunded in person; or

(ii) date the certified return receipt shows the refund was mailed;

(B) the name of the assignor;

(C) the amount received by the assignee; and

(D) the check number for the transfer of funds.

(6) The assignor must keep the receipt for audit purposes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303649
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 438-3734

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CHAPTER 47. PRIMARY HOME CARE

The Texas Department of Human Services (DHS) proposes the following changes in its Primary Home Care chapter. DHS proposes to repeal §47.2909, concerning physician supervision for Primary Home Care, and proposes to amend §47.1901, concerning definitions; §47.1903, concerning staffing requirements; §47.2901, concerning referrals to provider agencies; §47.2902, concerning assessment, service plan, and requesting prior approval; §47.2903, concerning provider agency requirements after verbal referral for Primary Home Care or community attendant services; §47.2904, concerning critical omissions/errors for Primary Home Care or community attendant services; §47.2911, concerning orientation of attendants; §47.2912, concerning service plan changes; §47.2913, concerning prior approval renewal for community attendant services; §47.2914, concerning suspension of services; §47.3906, concerning claims payment reviews and audits; §47.4902, concerning Primary Home Care provider qualifications; and §47.5902, concerning reimbursement methodology for Primary Home Care. DHS also proposes new §47.2909, concerning medical need determination, and new §47.3908, concerning retroactive payment procedures.

The proposal amends provider agency requirements in the Primary Home Care (PHC) program to allow DHS to continue the program within reduced funding levels. The proposal adds a definition for "Primary Home Care Program" and clarifies the three types of services under the PHC program by amending the definitions of "family care services" and "primary home care services," and by replacing references to "1929(b) PHC (Frail Elderly) services" with the term "community attendant services" and defining that term. The proposal removes the provider agency nurse from program requirements to require only a non-nurse supervisor, thus deleting the definition of "RN supervisor" and amending the definition of "supervisor." The proposal adds a definition for "practitioner" and uses this more accurate term in place of "physician." It also adds a definition for "practitioner's statement" and uses this term in place of "physician's order," thus deleting the definition for "physician's order." In addition to requiring only a non-nurse supervisor, the proposal changes provider agency licensing requirements. It requires that a provider agency be licensed as a home and community support services agency but only under the Personal Assistance Services (PAS) category of licensure. Finally, the proposal adds rules regarding medical need determination and retroactive payment procedures, and corrects several cross-references to other sections of the Texas Administrative Code.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the sections.

Bettye Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is that clients will continue to be served by the Primary Home Care program despite reduced funding. In addition, costs for provider agencies will be reduced and the burden on agencies to have a nurse for the Primary Home Care Program will be lifted. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because requiring a PAS home and community support services agency license only and removing the requirement for PHC agencies to have a nurse for the program should result in a reduction in cost for both small and large businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Cathryn Horton at (512) 438-4259 in DHS's Long Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-245, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER A. GENERAL PROVISIONS AND SERVICES

40 TAC §47.1901, §47.1903

The amendments are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments affect the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§47.1901. Definitions.

The following words and terms have the following meanings when used in this chapter, unless the context clearly indicates otherwise:

(1)-(7) (No change.)

(8) Community attendant (CA) services--A service under the Primary Home Care program providing in-home attendant services to eligible clients. Clients receiving CA services must have a medical need for specific tasks. CA services are provided under Title XIX of the federal Social Security Act (relating to Grants to States for Medical Assistance Programs), at 42 U.S.C. §1396t (relating to Home and community care for functionally disabled elderly individuals).

(9) [~~(8)~~] Controlling interest--an owner who is a sole proprietor, a partner owning 5.0% or more of the partnership, or a corporate stockholder owning 5.0% or more of the outstanding stock of the contracted provider, or a member of the board of directors.

(10) [~~(9)~~] Days--Any reference to days means calendar days, unless otherwise specified in the text. Calendar days include weekends and holidays [~~All references to number of days are based on calendar days unless the text clearly states otherwise~~].

(11) [~~(10)~~] Department--The Texas Department of Human Services.

(12) [~~(11)~~] Emancipated minor--A person under 18 years of age who has the power and capacity of an adult. This includes a minor who has had the disabilities of minority removed by a court of law or a minor who, with or without parental consent, has been married.

(13) [~~(12)~~] Exploitation--The illegal or improper act or process of a caretaker or others using an adult's resources for monetary or personal benefit, profit, or gain.

(14) [~~(13)~~] Family care (FC) services--A service under the Primary Home Care Program providing in-home attendant services to eligible adults. FC services are provided under Title XX of the federal Social Security Act (relating to Block Grants to States for Social Services), at 42 U.S.C. §1397 et seq [~~nonskilled, nontechnical in- home attendant service provided to eligible aged and disabled adults who are functionally limited in performing daily activities~~].

(15) [~~(14)~~] Income eligible--An adult who is neither a Supplemental Security Income (SSI) or Temporary Assistance for Needy Families (TANF) client, but who has income that is equal to or less than the eligibility level established by the department.

(16) [~~(15)~~] Institution--A nursing home, personal care home, intermediate care facility for the mentally retarded (ICF-MR), or state hospital.

(17) [~~(16)~~] Medicaid eligible--An individual who is eligible for Medicaid as an SSI or TANF client, or who is eligible for medical assistance only while living in the community.

(18) [~~(17)~~] Neglect--Failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caretaker to provide these goods or services.

(19) [~~(18)~~] Person with a disability--A person who, because of physical, mental, or developmental impairment, is limited in his capacity to adequately perform one or more essential activities of daily living. Activities of daily living include but are not limited to:

(A) personal and health care;

(B) mobility;

(C) communication; and

(D) money management.

~~[(19) Physician's order--An order for primary home care services that is signed and dated by a medical doctor (MD) or doctor of osteopathy (DO) who is licensed to practice medicine and who does not have a prohibitive ownership or significant financial or contractual relationship (42 Code of Federal Regulations 424.22(d)) with the agency that will deliver primary home care.]~~

(20) Practitioner--A currently licensed Texas physician or physician assistant, or a registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse.

(21) Practitioner's statement--A document signed by a practitioner that includes a client's diagnosis, current medications, and a statement that the client has a current medical need for assistance with personal care tasks and other activities of daily living.

(22) Primary Home Care Program--A Texas Department of Human Services attendant care services program. Community attendant (CA), primary home care (PHC), and family care (FC) are the three types of services available under the Primary Home Care Program.

(23) [~~(20)~~]Primary home care (PHC) services--A service under the Primary Home Care Program providing in-home attendant services to eligible clients. Clients receiving PHC services must have a medical need for specific tasks. PHC services are provided under Title XIX of the federal Social Security Act, at 42 U.S.C. §1396(a)(1) (relating to State plans for medical assistance) [~~In-home, nontechnical, medically related service provided by an attendant to clients whose chronic health problems cause them to be functionally limited in performing activities of daily living~~].

(24) [~~(21)~~] Prior approval--A decision made by the department regional nurse/caseworker, before services begin and before payment can be made, that the applicant or client meets the department criteria for the requested service.

(25) [~~(22)~~] Provider agency--A home and community support services agency that has a contract with the department to provide services under the Primary Home Care Program [~~primary home care~~].

(26) [~~(23)~~] Provisional contract--A time-limited contract.

~~[(24) RN supervisor--A nurse who is currently licensed as a registered nurse by the Texas Board of Nurse Examiners and who supervises the primary home care attendants.]~~

(27) [~~(25)~~] Special attendant--A provider agency employee who can substitute for another attendant.

(28) [~~(26)~~] Supervisor--A provider agency employee who:

(A) coordinates the delivery of services in the client's service plan;

(B) supervises attendants; and

(C) complies with §97.404 of this title (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance

Services) [licensed nurse or individual who meets home and community support services personal assistance services licensing standards. For primary home care services, the supervisor must be a registered nurse. This description applies when the term "supervisor" is used as a stand-alone term. Other types of supervisors are clearly referenced in context].

(29) [(27)] Unit of service--One hour of authorized service delivered to a prior- approved client.

[(28) Waiver 5--Federally approved waiver for individuals who meet income and resources criteria for Medicaid nursing home placement in Texas and who meet functional assessment and medical criteria for primary home care.]

§47.1903. Staffing Requirements.

(a)-(b) (No change.)

(c) The two types of attendants are as follows:

(1) Regular attendants. Each regular attendant must receive a general orientation as described in §47.2911 [§47.2906] of this chapter [title] (relating to Orientation of Attendants), before or at the time services begin.

(2) Special attendants. Special attendants may be used to initiate services, prevent a break in service, or provide ongoing services. Although special attendants are required to receive the general orientation specified in paragraph (1) of this subsection, they do not have to receive it in the client's home as long as they meet the following requirements.

(A) (No change.)

(B) The special attendant must either:

(i) meet the requirements described in §97.701 of this title (relating to Home Health Aides) [25 TAC §115.13(a) concerning Home Health Aides; Training Course; Duties]; or

(ii) meet the following requirements:

(I) (No change.)

(II) have demonstrated competency in providing personal care tasks to the satisfaction of the supervisor. [; or]

[(iii) be listed as a nurses aide on the Texas Department of Health nurse aide registry.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2003.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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SUBCHAPTER B. SERVICE REQUIREMENTS

40 TAC §§47.2901 - 47.2904, 47.2909, 47.2911 - 47.2914

The amendments and new section are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new section affect the Human Resources Code, §§22.0001- 22.038 and §§32.001-32.053.

§47.2901. Referrals to Provider Agencies.

(a) Unless a client needs a verbal referral for services, provider agencies receive written referrals based on the following priorities:

(1) client's choice; and

[(2) physician's choice, if stated; and]

(2) [(3)] rotation of eligible providers.

(b)-(c) (No change.)

§47.2902. Assessment, Service Plan, and Requesting Prior Approval [for Primary Home Care].

(a)-(c) (No change.)

(d) The supervisor [A registered nurse (RN)] must conduct an initial on- site [onsite health] assessment for all referrals [primary home care/family care clients,] using the client [health] assessment form [, to determine if the attendant should be supervised by an RN or someone who is not an RN].

(e) If the supervisor [RN] cannot conduct the [health] assessment within 14 days of the referral date, the provider agency must notify the caseworker about the reason for delay. The notification must be sent on the case information form, within the 14-day period.

(f) Using the service plan form, the supervisor [RN] must develop a service plan for the client. The service plan must be agreed upon and signed by the client/client's family and agency. The service plan must include:

(1) the client [health] assessment;

(2)-(4) (No change.)

(g) After the supervisor [RN] conducts the [health] assessment, he must obtain the practitioner's statement described in §47.2909 of this chapter (relating to Medical Need Determination) [a physician's order by sending the physician's order form to the client's physician]. If the provider agency cannot obtain the practitioner's statement [physician's order] within 14 days of the referral date, the provider agency must notify the caseworker about the reason for delay by sending the case information form within the 14-day period. The case information form must include the date of the [health] assessment and must be dated after the [health] assessment date.

[(h) The provider agency may be reimbursed for services provided to an eligible client up to three months prior to the month a completed, signed, and dated Texas Department of Human Services' (DHS's) application for assistance form (for aged and disabled) is received by DHS.]

[(i) If DHS determines that the client is eligible for primary home care services, the provider agency must reimburse the client the entire amount of all payments made to the provider for eligible services during the three months preceding eligibility, regardless of whether or not those payments exceeded the amount the provider will be reimbursed for those services under Medicaid.]

§47.2903. Provider Agency Requirements after Verbal Referral for Primary Home Care or Community Attendant Services.

(a) When a provider agency is contacted by a caseworker about the need for verbal prior approval, the supervisor [RN] must make an on-site [onsite health] assessment of the applicant and must contact the

applicant's practitioner [~~physician~~] to get the verbal or written practitioner's statement [~~physician's order~~].

(b) The supervisor [~~RN~~] must verbally request prior approval and give the regional nurse:

(1) a summary of the service plan, including:

(A) (No change.)

(B) results of the [~~health~~] assessment; and

(C) (No change.)

(2) the date of the verbal or written practitioner's statement [~~physician's verbal order for primary home care services~~];

(3)-(4) (No change.)

(c) The [~~RN~~] supervisor documents in the client's case folder the date and time of the verbal approval and the name of the regional nurse who gave the approval.

(d)-(f) (No change.)

§47.2904. Critical Omissions/Errors for Primary Home Care or Community Attendant Services.

(a) If the client [~~health~~] assessment/service plan form or the practitioner's statement [~~physician's order for primary home care~~] is missing, or if any of the following critical omissions or errors has occurred in the required documentation, the provider agency cannot obtain prior approval.

(1) The supervisor [~~RN~~] fails to sign or date the client [~~health~~] assessment/service plan [~~or omits the RN credentials that should follow his signature~~].

(2) Major functional impairment documented on the client [~~health~~] assessment is not related to the medical diagnosis(es) on the form, or functional impairment is not documented.

(3)-(4) (No change.)

(5) The medical diagnosis(es) on the practitioner's statement [~~physician's order for primary home care~~] does not support the client's functional impairment.

(6) The practitioner's statement [~~physician's order form~~] does not include the [~~MD or DO~~] credential of the practitioner [~~physician~~] who signed the order.

(7) The practitioner's statement [~~physician's order~~] does not include the license number of the practitioner [~~physician~~] who signed it.

(8) The practitioner [~~physician~~] who signed the order is excluded from participation in Medicare or Medicaid.

(9) The practitioner's [~~physician's~~] signature is not on the practitioner's statement [~~physician's order~~].

(10) The practitioner's [~~physician's~~] signature date is missing or illegible and the provider agency's stamped date is missing from the practitioner's statement [~~physician's orders~~].

(11) The provider agency's stamped date used instead of the practitioner's [~~physician's~~] date on the practitioner's statement [~~physician's orders~~] does not include the provider agency's name, abbreviated name, or initials.

(b) (No change.)

§47.2909. Medical Need Determination.

(a) Applicability. This section does not apply to family care.

(b) Determining medical need. The provider agency must determine medical need by completing a practitioner's statement and submitting the statement within the time frame described in §47.2902 of this chapter (relating to Assessment, Service Plan, and Requesting Prior Approval) for:

(1) applicants who are referred to the provider agency (unless the applicant requests and is to receive family care only);

(2) clients who are receiving family care only and who are referred to the provider agency for primary home care or community attendant services; and

(3) clients who are referred to the provider agency to have medical need re-assessed, as requested by the case manager, such as when the initial medical need was established for a limited time.

(c) Negotiated referrals. In the case of negotiated referrals, the provider agency:

(1) must initially determine medical need by obtaining an oral statement of medical need from the practitioner before initiating services as described in §47.2905 of this chapter (relating to Initiation of Service); and

(2) must then complete and submit a practitioner's statement as described in §47.2903 of this chapter (relating to Provider Agency Requirements after Verbal Referral for Primary Home Care or Community Attendant Services).

(d) Mental illness and mental retardation. Persons diagnosed with mental illness or mental retardation or both are not considered to have established medical need based solely on such diagnoses, but may establish medical need through a related diagnosis.

(e) Documentation of medical need determination. The provider agency must maintain the practitioner's statement in the client file.

§47.2911. Orientation of Attendants.

(a) The supervisor [~~, who is a registered nurse (RN) for a licensed home health agency, or is not an RN for a personal assistance services (PAS) agency,~~] must orient the [~~that~~] attendant before or when services for the client begin. The supervisor must meet with the attendant and the client at the client's home to give the attendant a general orientation about the client. The purpose of the orientation is to:

(1) (No change.)

(2) ensure that the attendant is able to recognize and report any changes in the client's condition [~~health (such as shortness of breath, swelling of feet, or chest pains in the presence of certain health conditions)~~]; and

(3) (No change.)

(b) (No change.)

§47.2912. Service Plan Changes.

(a) (No change.)

(b) When a caseworker initiates an increase or decrease in hours or service termination, he sends the authorization for community care services to the provider agency to:

(1) authorize the change if the client receives family care or primary home care services [~~under Medicaid eligibility status~~]; and

(2) notify the provider agency to request authorization of the change from DHS's regional nurse when the change is for a client who receives community attendant services [~~is eligible for primary home care under the provisions of the Social Security Act, §1929(b)~~].

To request approval of the change, the provider agency must forward to DHS's regional nurse the authorization for community care services and the attendant orientation/supervisory visit form within seven days of the receipt of the authorization for community care services from the caseworker.

(c)-(e) (No change.)

§47.2913. Prior Approval Renewal for Community Attendant Services [~~Primary Home Care~~].

(a) For clients who receive community attendant services [~~are eligible for primary home care under the provisions of the Social Security Act, §1929(b)~~], the supervisor must send the following forms to the regional nurse to obtain renewal of prior approval:

(1) (No change.)

(2) authorization for community care services [~~, if received from the caseworker~~]; and

(3) (No change.)

(b) The supervisor must submit the prior approval material to the regional nurse within 14 days of the referral date [~~in time for it to be postmarked or date-stamped by the department no later than one day after the termination date of the current prior approval period~~].

§47.2914. Suspension of Services.

(a) The provider agency must suspend services before the end of the prior approval period if one or more of the following circumstances occurs.

(1)-(4) (No change.)

[~~(5) The physician requests that services end (not applicable to family care).~~]

(5) [~~(6)~~] The department denies the client's Medicaid eligibility (not applicable to family care).

(6) [~~(7)~~] The client or someone in the client's home threatens the health or safety of the attendant or his supervisor.

(7) [~~(8)~~] The department enforces sanctions against the provider agency by terminating the contract.

(b)-(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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40 TAC §47.2909

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001-22.038 and §§32.001- 32.053.

§47.2909. Physician Supervision for Primary Home Care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. CLAIMS PAYMENT

40 TAC §47.3906, §47.3908

The amendment and new section are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new section affect the Human Resources Code, §§22.0001- 22.038 and §§32.001-32.053.

§47.3906. Claims Payment Reviews and Audits.

(a)-(d) (No change.)

(e) Failure to maintain records. If the provider agency fails to maintain records as specified in §69.205 [~~§69.202~~] of this title [~~chapter~~] (relating to Contractor's [~~Contractors'~~] Records), the department may initiate corrective action plans and/or monetary exceptions.

(f)-(g) (No change.)

(h) List of financial errors. In the absence of acceptable secondary documentation, financial errors include, but are not limited to, the following.

(1)-(4) (No change.)

(5) The provider agency makes a claim for services, but a valid practitioner's statement [~~physician's order~~] is missing. The department applies the error to the total number of units claimed and not covered by a valid practitioner's statement [~~order~~].

(i) (No change.)

§47.3908. Retroactive Payment Procedures.

(a) Applicability.

(1) This section does not apply to family care.

(2) A provider agency that chooses to request retroactive payment must comply with the requirements of this section.

(b) Definition of retroactive payment. A retroactive payment is payment by the Texas Department of Human Services (DHS) to a provider agency for services under the Primary Home Care Program that are provided before the date the case manager determines the person's eligibility for the services.

(c) Reimbursement.

(1) The provider agency may be reimbursed for services provided before the date a completed, signed, and dated copy of DHS's Application for Assistance--Aged and Disabled form is received:

(A) for up to three months for a person who does not have Medicaid eligibility at the time of the request for retroactive payment; and

(B) for an indefinite period for a person who is Medicaid eligible at the time of the request for retroactive payment.

(2) DHS will only reimburse the provider agency for the:

(A) services described in §47.1902 of this chapter (relating to Required Services);

(B) number of hours of services allowed to be provided the person, calculated as described in §48.2918 of this title (relating to Eligibility for Primary Home Care); and

(C) allowable costs of the Primary Home Care Program, as described in 1 TAC, Chapter 355 (relating to Medicaid Reimbursement Rates).

(3) DHS will not reimburse the provider agency if:

(A) the provider agency fails to submit the required documentation within the required time frames; or

(B) the person provided services does not meet the requirements described in subsection (d) of this section.

(d) Requirements before requesting retroactive payment. The provider agency may not request retroactive payment unless:

(1) the person appears to be Medicaid eligible as defined in §48.1201 of this title (relating to Definition of Program Terms);

(2) the provider agency obtains the practitioner's statement and establishes medical need under §47.2909 of this chapter (relating to Medical Need Determination);

(3) the person requires at least one personal care service as described in §47.1902 of this chapter; and

(4) the provider agency has verified and documented that the person is not already receiving services under the Primary Home Care Program from another provider agency.

(e) Service plan. The provider agency must develop a service plan for the person as described in §47.2902 of this chapter (relating to Assessment, Service Plan, and Requesting Prior Approval).

(f) Intake referral. On the day that the provider agency develops a service plan for the person, the provider agency must contact the local DHS office by telephone and make an intake referral by providing DHS information on the person to start the eligibility process.

(g) Service initiation. The provider agency must begin to provide services to the person on the date the provider agency develops the service plan and processes the intake referral as described in subsections (e) and (f) of this section.

(h) Requesting retroactive payment.

(1) A provider agency's written request for retroactive payment must include:

(A) a copy of the service plan required by subsection (e) of this section; and

(B) the retroactive payment information, including the:

(i) name of the provider agency;

(ii) contact information for the person;

(iii) date services were started;

(iv) tasks provided to the person. This includes both tasks allowed and not allowed by the Primary Home Care Program;

(v) weekly hours of service provided to the person. This includes hours allotted to tasks allowed and not allowed by the Primary Home Care Program; and

(vi) cost per hour of service charged to the person.

(2) The provider agency must submit the written request for retroactive payment:

(A) to the case manager or, if no case manager has been assigned, to DHS intake staff; and

(B) within seven days after the date the provider agency processes the intake referral.

(i) Charges to persons provided services.

(1) The provider agency may charge a person for services for which the provider agency intends to request retroactive payment, unless the person is Medicaid eligible.

(2) The provider agency must reimburse the entire amount of all payments made by the person to the provider agency for eligible services, even if those payments exceed the amount DHS will reimburse for the services, if DHS determines that the person is eligible for the Primary Home Care Program.

(j) Documentation of retroactive payment requests. The provider agency must maintain documentation of retroactive payment requests in the client file.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
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Texas Department of Human Services
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SUBCHAPTER D. PROVIDER CONTRACTS

40 TAC §47.4902

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment affects the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§47.4902. Primary Home Care Provider Qualifications.

(a) To qualify [~~be qualified~~] as a home and community support services (HCSS) agency [~~provider to deliver primary home care services~~] under contract with the Texas Department of Human Services (DHS) to provide services under the Primary Home Care Program, an HCSS agency must:

(1) (No change.)

(2) deliver primary home care services through the personal assistance services (PAS) [~~or the licensed home health services~~] category of licensure;

(3) have the counties in the DHS contract for primary home care services included in the identified licensed service area on file at DHS within personal assistance services [~~or licensed home health services~~] category of licensure; and

(4) (No change.)

(b) A provider agency may request that DHS amend the agency's contract to add counties, if the following conditions exist:

(1) (No change.)

(2) The counties to be added to the contract are included in the identified licensed service area on file at DHS within personal assistance services [~~or licensed home health services~~] category of licensure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. SUPPORT DOCUMENTS

40 TAC §47.5902

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment affects the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§47.5902. Reimbursement Methodology for Primary Home Care [~~and Family Care Services~~].

(a)-(b) (No change.)

(c) Reimbursement determination. Reimbursement is determined in the following manner.

(1) Cost determination by cost area. Allowable costs are combined [~~for Primary Home Care and Family Care~~] into three cost areas, after allocating payroll taxes to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense and after applying employee benefits directly to the corresponding salary line item.

(A)-(C) (No change.)

(2)-(3) (No change.)

[~~(4) For 1929(b) clients participating in the vendor fiscal intermediary payment option. The hourly payment rate for required annual and other assessments performed by a registered nurse (RN) is the hourly payment rate determined for RN services in the Community Based Alternatives program.~~]

[~~(d) Reimbursement determination authority. The reimbursement determination authority is specified in §20.101 of this title (relating to Introduction).~~]

(d) [~~(e)~~] Desk reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by DHS or its designee to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §20.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or an audit in accordance with §20.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §20.110 of this title (relating to Informal Reviews and Formal Appeals).

(e) [~~(f)~~] Factors affecting allowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §20.102 this title (relating to General Principles of Allowable and Unallowable Costs) and §20.103 of this title (relating to Specifications for Allowable and Unallowable Costs).

(f) [~~(g)~~] Reporting revenues. Revenues must be reported on the cost report in accordance with §20.104 of this title (relating to Revenues).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED
SUBCHAPTER F. IN-HOME AND FAMILY SUPPORT PROGRAM

40 TAC §§48.2705, 48.2707, 48.2708

The Texas Department of Human Services (DHS) proposes to amend §§48.2705, 48.2707, and 48.2708, concerning the service plan, program restrictions, and service subsidy and capital expenditures for the In-Home and Family Support Program (IH/FSP), in its Community Care for Aged and Disabled chapter. The purpose of the amendments is to allow DHS to set grant amounts from $0 to $3,600 for IH/FSP. The proposed amendments will enable DHS to continue serving existing IH/FSP clients within reduced funding levels and to administer the program with greater flexibility. The amendment also changes the word applicant to client where appropriate. The amendments to §48.2707 and §48.2708 revise procedures for receipt reconciliation and subsidy issuance to assist regions in distributing and managing a reduced budget. The service subsidy will be issued based on the client's approved service

plan for each six-month period, and caseworkers will no longer accept receipts for the six month period preceding the client's current subsidy period. These amendments will impact current IH/FSP recipients and new applicants by focusing on the ongoing service subsidies to individuals within the funding appropriated by the 78th Legislature.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the sections.

Bettye Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is that current IH/FSP clients will remain eligible for assistance despite reduced levels of funding for the program. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because the proposed amendments address eligibility and assistance levels for IH/FSP clients and do not affect the operation of any size business. There is no anticipated economic cost to persons who are required to comply with the proposed sections, but a reduction in the maximum amount of the cash grant may adversely affect clients. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Debbie Berliner at (512) 438-3199 in DHS's In-Home and Family Support Program. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-249, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

The amendments are proposed under the Human Resources Code, Chapters 22 and 35, which authorizes DHS to administer public assistance programs and provide support services to persons with disabilities.

The amendments implement the Human Resources Code, §§22.0001-22.038 and §§35.001-35.012.

§48.2705. Service Plan.

(a) A client [~~An eligible applicant~~] may receive [~~qualify for~~] either or both of the following two categories of program benefits.

(1) The client [~~applicant~~] may receive a one-time cash grant [~~of up to $3,600~~] for architectural renovation or other capital expenditure to improve or facilitate the care, treatment, therapy, or general living conditions of the person who has a disability. A capital expenditure is defined as any one-time purchase costing more than $250. At its discretion and subject to available funding, the Texas Department of Human Services (DHS) may set the maximum grant at zero to $3,600.

(2) The client [~~applicant~~] may also receive a cash subsidy grant [~~of up to $3,600 for any 12-month period~~] to purchase services covered under §48.2706 of this title (relating to Allowable In-Home and Family Support Program (IH/FSP) Services). At its discretion and subject to available funding, the Texas Department of Human Services (DHS) may set the maximum grant at zero to $3,600.

(b)-(e) (No change.)

§48.2707. Program Restrictions.

(a)-(b) (No change.)

(c) The applicant must agree to submit receipts for service subsidy funds, and the copayment amount, if any, at intervals designated by the Texas Department of Human Services (DHS) during the 12-month certification period. A one-time submittal of receipts is required for the capital expenditure grant. If the applicant fails to furnish the required receipts, he is denied eligibility and may be required to make restitution for amounts for which there are no receipts. The receipts that are returned to verify how the program funds were spent must be approved allowable purchases and must not be dated prior to the date the individual was certified as eligible for the IH/FSP. Receipts are due within six months from date of approved certification. [~~The caseworker may accept valid receipts for allowable services that were delivered or purchased during the six-month period immediately preceding a client's current subsidy period, if the receipts were not applied to previous receipt reconciliation and the client was certified for the IH/FSP during the prior six-month period.~~] The receipts must:

(1)-(6) (No change.)

(d) (No change.)

(e) Clients [~~Applicants~~] are limited to the maximum grants set by DHS minus their copayment amounts [~~one $3600 grant for capital expenditures~~].

(f)-(h) (No change.)

§48.2708. Service Subsidy and Capital Expenditure.

(a) The amounts of service subsidies and capital expenditures are based on costs of services minus the required copayment amounts up to the maximum grants set by the Texas Department of Human Services.

(b) The service subsidy is issued in intervals no greater than six months during the 12-month period of eligibility. [~~The net amount of the In-Home and Family Support Program (IH/FSP subsidy is divided by two to determine the amount of the biannual subsidy payments. The first payment is issued at the beginning of the first six months of eligibility. The remaining subsidy amount is issued at the beginning of the second six months of eligibility.~~] Continued program eligibility is contingent upon verification by the IH/FSP caseworker that all program benefits, including the copayment amount, are spent according to program requirements.

(c)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
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SUBCHAPTER H. ELIGIBILITY

40 TAC §48.2920

The Texas Department of Human Services (DHS) proposes to amend §48.2920, concerning supervised living, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to add room and board requirements for the Community Care for Aged and Disabled (CCAD) Residential Care (RC) Program. The addition of a room and board payment requirement will provide DHS with greater flexibility in funding and administering the program. Effective September 1, 2003, all CCAD RC clients will begin to pay a room and board payment directly to the facility. The total amount of money the client pays will not increase. Clients and provider agencies will be notified of the standard room and board amounts initially, and when changes occur. The proposal also changes the name of the section to Residential Care.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that the CCAD RC Program will continue to provide a service option for eligible clients. The public will also benefit from a rule that reflects and implements the most recent legislative changes. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the rate paid to assisted living facilities will not be affected. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Duanne Harris at (512) 438- 5464 in DHS's Long Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-248, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment affects the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§48.2920. Residential Care [~~Supervised Living~~].

(a) Eligibility for residential care [~~supervised living~~] is based on the following criteria:

(1)-(4) (No change.)

(b) The client must contribute to the total cost of the care that he receives, including payment for room and board. The room and board amount is calculated from the client's gross income. The client is responsible for paying this amount directly to the provider agency. The client may be required to pay a copayment based on the amount of income remaining after all allowances are deducted.

(1)-(2) (No change.)

(3) In no case may the client's contribution, when added to the department's payment, exceed the rate established for residential care [~~supervised living~~].

(c)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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40 TAC §48.2925

The Texas Department of Human Services (DHS) proposes new §48.2925, concerning service authorizations, in its Community Care for Aged and Disabled chapter. The purpose of the new section is to adopt new utilization control procedures and criteria for the authorization of hours in personal assistance services (PAS). The new procedures and criteria allow for a 15% reduction in PAS hours for all but priority clients, which is necessary if DHS is to continue the programs within reduced funding levels as authorized by the 78th Texas Legislature.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

The effect on state government for the first five-year period the section is in effect is an estimated reduction in cost of $43,776,618 in fiscal year (FY) 2004; $50,860,000 in FY 2005; $50,860,000 in FY 2006; $50,860,000 in FY 2007; and $50,860,000 in FY 2008.

Bettye Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that all current clients in primary home care and family care will continue to receive some personal assistance services despite reduced levels of funding. The new section may have an adverse economic effect on small home and community support services agencies contracting with DHS to provide PAS hours due to the reduction of authorized hours for non- priority clients. However, since the rule imposes no compliance requirements on those agencies, there will be no economic cost to the agencies to comply with the rule. There is no anticipated economic cost to persons who are required to comply with the proposed section because it does not impose any compliance requirements, but persons whose service hours are reduced may

be adversely affected. For each of the first five years the section is in effect, there may be an effect on local employment in geographic areas affected by this section, because, with a 15% reduction in PAS hours for non-priority clients, attendants hired will work fewer hours.

Questions about the content of this proposal may be directed to Duanne Harris at (512) 438- 5464 in DHS's Long Term Care Client Eligibility section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-247, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1:00 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The new section is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§48.2925. Service Authorizations.

(a) In the Primary Home Care Program, including primary home care services, family care services, and community attendant services (operated under §1929(b) of the Social Security Act), the Texas Department of Human Services uses utilization methodologies for determining hours of service based on the assessment of an individual's functional needs.

(b) The utilization methodologies include the criteria described in §48.2918(f) of this chapter (relating to Eligibility for Primary Home Care) to determine whether an individual qualifies for priority status.

(c) Individuals who qualify for priority status will receive the maximum allowable number of service hours based on the client needs assessment for that person.

(d) Service hours for individuals who do not meet the criteria for priority status may be adjusted based on utilization control procedures.

(e) For a client to receive an increase in hours, the client must have a change in at least one of the following criteria:

(1) a medical condition that requires additional services;

(2) decrease in functional ability that requires additional services;

(3) loss of necessary caregiver support; or

(4) environmental changes requiring more care.

(f) Documentation on the client needs assessment and in the case record must justify a request for an increase in hours. The case manager submits the documentation to the supervisor for approval. Based on the documentation and the current utilization control procedures, the supervisor approves or denies the request for an increase in hours for the client.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Department of Human Services
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CHAPTER 79. LEGAL SERVICES

The Texas Department of Human Services (DHS) proposes to amend §79.1917, concerning effect of an administrative determination of intentional program violation; §79.2001, concerning terms and general policy; and §79.2003, concerning determination and disposition of intentional program violations, in its Legal Services chapter. The purpose of the amendments is to implement changes mandated by House Bill (HB) 2292, 78th Legislature. HB 2292, Section 2.26, created Government Code, §531.114, which provides for sanctions for intentional program violations in the Temporary Assistance for Needy Families (TANF) Program. The amendment to §79.1917 incorporates those sanctions, which permanently disqualify a person from the TANF Program the second time the individual has been determined to have committed an intentional program violation and provides for judicial review for DHS's findings of intentional program violations. The amendment also permanently disqualifies a person convicted of a state or federal offense for conduct described in §531.114 or if the person is granted deferred adjudication or placed on community supervision for that conduct. The amendment to §79.2001 changes the definition of an intentional program violation. The amendment to §79.2003 changes the application of the permanent disqualification sanction outlined in §79.1917.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mary Ault, Deputy Commissioner for the Office of Program Integrity, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is clients will be provided with notice of the definition of an intentional program violation in the TANF Program, disqualification penalties imposed when an intentional program violation in the TANF Program has been committed, and the available remedy for Administrative Disqualification Determination. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because these rules impact the ability of TANF clients who have committed intentional program violations to receive TANF benefits, and will have no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Pam Colon at (512) 231- 5845 in DHS's Office of Program Integrity. Written comments on the proposal may be submitted

to Supervisor, Rules and Handbooks Unit-261, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER T. ADMINISTRATIVE FRAUD DISQUALIFICATION HEARINGS

40 TAC §79.1917

The amendment is proposed under Human Resources Code, Chapters 31 and 33, which authorizes DHS to administer financial assistance programs and to administer nutritional assistance programs.

The amendment affects the Human Resources Code, §§31.001-31.081 and §§33.001-33.027.

§79.1917. Effect of an Administrative Determination of Intentional Program Violation.

(a) If a hearing officer finds that a household member committed an intentional program violation, the household member is disqualified from the Food Stamp and/or Temporary Assistance for Needy Families (TANF) programs for the following periods.

(1) TANF. If the intentional program violation occurred on or after September 1, 2003, the [~~The~~] person is disqualified:

(A) 12 months for the first intentional program violation determination; and

(B) permanently [~~24 months~~] for the second intentional program violation determination.[~~;~~]

[~~(C) permanently for the third intentional program violation determination; and~~]

[~~(D) for a period of ten years, if convicted in a state or federal court of having made a fraudulent statement or representation with respect to the place of residence of the individual, in order to receive benefits in two or more states for the same period of time.~~]

(2) (No change.)

(b) The disqualification period does not depend upon the amount of benefits involved. The disqualification period set at the time of the hearing is applicable regardless of current eligibility. [~~The household member may not:~~]

[~~(1) appeal the final intentional program violation decision; or~~]

[~~(2) have this decision reversed by a subsequent fair hearing decision. The household member is entitled, however, to seek relief in a court having jurisdiction.~~]

(c) The decision of the hearing officer in the Administrative Disqualification Hearing is final. The household member:

(1) may not have this decision reversed by a subsequent Administrative Disqualification Hearing; and

(2) may appeal that determination by filing a petition in the district court in the county in which the violation occurred not later than the 30th day after the date the hearing officer made the determination.

(d) [~~(c)~~] If one hearing is held for several offenses, the Texas Department of Human Services [~~(DHS)~~] may impose only one disqualification period.

(e) [~~(d)~~] If the hearing officer imposes a one year disqualification for an initial violation, no further disqualifications may be imposed for violations occurring before the hearing decision that are later discovered. These violations may be brought to the hearing officer and, if appropriate, an intentional program violation may be found.

(f) [~~(e)~~] Although the hearing officer's decision regarding the intentional program violation is final, the appellant may appeal the investigator's computation of the amount of overpayment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303592
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER U. FRAUD INVOLVING RECIPIENTS

40 TAC §79.2001, §79.2003

The amendment is proposed under Human Resources Code, Chapters 31 and 33, which authorizes DHS to administer financial assistance programs and to administer nutritional assistance programs.

The amendment affects the Human Resources Code, §§31.001-31.081 and §§33.001-33.027.

§79.2001. Terms and General Policy.

(a) Food stamp, medical assistance, and financial assistance are indicated when the term "assistance" is used in this subchapter. Medical assistance, Temporary Assistance for Needy Families (TANF) [~~aid to families with dependent children (AFDC)~~], and food stamp intentional program violations are not given special treatment except if specific procedural distinctions are noted.

(b) (No change.)

(c) A TANF [~~An AFDC~~] intentional program violation occurs when a person, for the purpose of establishing or maintaining the eligibility of a person and the person's family for financial assistance under the Human Resources Code, Chapter 31, or for the purpose of increasing or preventing a reduction in the amount of that assistance, intentionally [~~has occurred if a recipient has intentionally, for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant~~]:

(1) makes a statement that the person knows is false or misleading [~~made a false or misleading statement~~];

(2) misrepresents, conceals, or withholds a fact [~~misrepresented, concealed, or withheld facts, or represented a falsehood to be a fact~~]; or

(3) knowingly misrepresents a statement as being true [~~violated any provision of the state or federal statutes or regulations applicable to the AFDC program~~].

(d)-(e) (No change.)

(f) In food stamp and TANF [~~AFDC~~] intentional violation proceedings against individuals, actions under either the food stamp or TANF [~~AFDC~~] programs will be coordinated with the actions under the other, to the extent possible.

§79.2003. Determination and Disposition of Intentional Program Violations.

(a) The Texas Department of Human Services (DHS) determines the existence of intentional program violations; refers cases for investigation, administrative hearings, and prosecution; takes collection action and ensures clients' rights according to applicable Texas criminal statutes and the following:

(1) Temporary Assistance for Needy Families (TANF)--as provided in: [~~Personal Responsibility and Work Opportunity Act (PL 104-193), and Chapter 31 Human Resources Code.~~]

(A) Personal Responsibility and Work Opportunity Act 42 (U.S.C. §601 et. seq.);

(B) Human Resources Code, Chapter 31; and

(C) Government Code, §531.114;

(2) Food Stamp Program--7 Code of Federal Regulations, §§273.16-273.18;and

(3) Medicaid Program--42 Code of Federal Regulations, §455.2 and §455.16.

(b) Individuals found to have committed an intentional program violation in the food stamp and/or TANF programs [~~either~~] through an administrative disqualification hearing [~~or by a court of appropriate jurisdiction,~~] or who have signed a waiver of right to an administrative disqualification hearing are subject to the disqualification periods outlined in §79.1917 of this title (relating to Effect of an Administrative Determination of Intentional Program Violation) [~~, or on the basis of a plea of guilty or nolo contendere or otherwise in cases referred for prosecution in a state or federal court are ineligible to participate in the program for 12 months for the first violation, 24 months for the second violation, and permanently for the third violation. In TANF cases, DHS does not take the needs of the disqualified individual into account during the period he is disqualified when determining the assistance unit's need and amount of assistance. DHS considers any resources and income of the disqualified individual as available to the assistance unit. DHS does not disqualify an individual from the TANF program unless the overissuance of benefits resulting from the intentional violation occurred in the month of October 1988 or later~~].

(c) If a person is convicted of a state or federal offense for conduct, as described in §79.2001(c) of this title (relating to Terms and General Policy), and such conduct is committed on or after September 1, 2003, or if the person is granted deferred adjudication or placed on community supervision for that conduct, the person is permanently disqualified from receiving financial assistance.

(d) Individuals found to have committed an intentional program violation in the Food Stamp Program by a court of appropriate jurisdiction, or on the basis of a plea of nolo contendere or otherwise in cases referred for prosecution in state or federal court, are subject to the disqualification periods outlined in §79.1917(a) of this title.

(e) In TANF cases, DHS does not take the needs of the disqualified individual into account during the period he is disqualified when determining the assistance unit's need and amount of assistance. DHS considers any resources and income of the disqualified individual as available to the assistance unit. DHS does not disqualify an individual from the TANF program unless the overissuance of benefits resulting from the intentional violation occurred in the month of October 1988 or later.

(f) [~~(c)~~] Disqualified individuals are ineligible for TANF Medicaid benefits during the disqualification period. However, they may qualify for and receive benefits under provisions of Chapter 2 of this title (relating to Medically Needy and Children and Pregnant Women Programs [~~the Medically Needy Program) or under provisions of Chapter 4 of this title (relating to the Medical Programs for Children and Pregnant Women~~]).

(g) [~~(d)~~] A household member may be charged with an intentional program violation even if he has not actually received benefits to which he is not entitled.

(h) [~~(e)~~] The amount of the intentional program violation claim must be calculated back to the month the act of intentional program violation occurred, regardless of the length of time that elapsed until the determination of intentional program violation was made. However, DHS must not include in its calculation any amount of the overissuance that [~~which~~] occurred in a month more than six years from the date the overissuance was discovered for food stamp cases.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303593
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 438-3734

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CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §90.19

The Texas Department of Human Services (DHS) proposes to amend §90.19, concerning license fees, in its Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions chapter. The purpose of the amendment is to clarify in DHS's rules that the quality assurance fee for intermediate care facilities for persons with mental retardation (ICF/MR) established in Health and Safety Code, Chapter 252, now applies to state schools in accordance with House Bill 2292, 78th Legislature. Under Health and Safety Code, §252.205, rules related to the actual imposition and collection of the quality assurance fee are the responsibility of the Health and Human Services Commission.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there

are no fiscal implications for state or local government as a result of enforcing or administering the section.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is clarification that the quality assurance fee for ICF/MR established in Health and Safety Code, Chapter 252, now applies to state schools. There is no adverse economic effect on small, micro, or other businesses as a result of enforcing or administering the section, because it has no economic impact. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Rose Rossman at (512) 438-3750 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-234, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal on July 11, 2003, at 1 p.m. in the John H. Winters Building Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Health and Safety Code, Chapter 252, which authorizes DHS to license and regulate intermediate care facilities for persons with mental retardation or related conditions.

The amendment implements the Health and Safety Code, §252.202(a).

§90.19. License Fees.

(a)-(c) (No change.)

(d) Quality Assurance Fee. A quality assurance fee is imposed on each facility licensed under the Health and Safety Code, Chapter 252, [~~of the Health and Safety Code and~~] each intermediate care facility for persons with mental retardation owned by a community mental health and mental retardation center, and each facility owned by the Texas Department of Mental Health and Mental Retardation. The fee is payable monthly and is in addition to other fees imposed under this chapter. The amount of the fee, method of payment, and penalties for noncompliance are stated in 1 TAC Chapter 352.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303590
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 27, 2003
For further information, please call: (512) 438-3734

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 419. MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

25 TAC §§419.151 - 419.166, 419.169 - 419.182

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration the proposed repeal of §§419.151 - 419.166 and §§419.169 - 419.182 which appeared in the June 13, 2003, issue of the *Texas Register* (28 TexReg 4520).

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303692
Rodolfo Arredondo
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: June 16, 2003
For further information, please call: (512) 206-5232

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS - STANDARDS

1 TAC §251.2

The Commission on State Emergency Communications (CSEC) adopts an amendment to §251.2, concerning guidelines for changing or extending 9-1-1 service arrangements, without changes to the proposed text as published in the May 2, 2003 issue of the *Texas Register* (28 TexReg 3661).

The section makes some modifications that bring the rule in line with current Commission policies and procedures regarding amendments. The rule currently requires prior approval for any service arrangement changes or extension; current policy only requires a notification amendment. It also reflects updated languages and definitions to bring the rule in line with other current rules. Additionally, this would combine the certification and amendment process for wireless service implementations, and would eliminate duplicate work for the RPCs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Health and Safety Code, Chapter 771, Sections 771.051, 771.055 and 771.056; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to administer and implement 9-1-1 emergency communications.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303681
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: July 6, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 305-6933

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1 TAC §251.7

The Commission on State Emergency Communications (CSEC) adopts the amendment to §251.7, concerning the inclusion of third-party software applications into the 9-1-1 integrated workstation environment through expanded guidelines and provisions, without changes to the proposed text as published in the May 2, 2003 issue of the *Texas Register* (28 TexReg 3664).

The section brings the rule in line with current Commission policies and procedures: expanded and updated definitions; addition of Information Management to the list of allowable integrated services; inclusion of CPU, in addition to baseline memory, in the testing requirements; clarification as to when notification amendments and Commission approval are required; and clarification of integration of third-party applications vs. the installation of new equipment that includes these applications.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Health and Safety Code, Chapter 771, Sections 771.051, 771.055 and 771.056; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to administer the implementation of statewide 9-1-1 service, to develop minimum performance standards for 9-1-1 service to be followed in developing regional plans, and to allocate money for the operation of 9-1-1 service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303682
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: July 6, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 305-6933

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CHAPTER 253. PRACTICE AND PROCEDURE

1 TAC §§253.1 - 253.31

The Commission on State Emergency Communications (CSEC) adopts the repeal §§253.1-253.31, concerning Practice and Procedure, Resolution Process and Procedural Rules, without changes to the proposed text as published in the May 2, 2003 issue of the *Texas Register* (28 TexReg 3666). The adopted review to this chapter is being published elsewhere in this issue of the *Texas Register*.

Sections 253.1-253.30, which address billing and collection procedures and the processing of contested cases are no longer applicable to the CSEC. The responsibility for billing and collection was transferred from the CSEC to the Comptroller's Office during the 77th Legislative session. Therefore, there is no need for CSEC to continue those sections.

Section 253.31, Petitions for Rulemaking Before the Commission, continues to be applicable to CSEC and is being adopted for repeal in order to be adopted as new §253.1. The section provides a process for any interested persons to petition the commission requesting the adoption of a new rule or the amendment of an existing rule and for Commission initiated rulemaking.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Health and Safety Code, Chapter 771, §§771.051, 771.055 and 771.056; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to administer and implement 9-1-1 emergency communications.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303683
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: July 6, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 305-6933

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1 TAC §253.1

The Commission on State Emergency Communications (CSEC) adopts new §253.1, concerning Practice and Procedure, Resolution Process and Procedural Rules, without changes to the proposed text as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3667).

Section 253.31, Petitions for Rulemaking Before the Commission, continues to be applicable to CSEC and is being adopted for repeal in order to be adopted as new §253.1. The section provides a process for any interested persons to petition the commission requesting the adoption of a new rule or the amendment of an existing rule and for Commission initiated rulemaking.

No comments were received regarding adoption of the new section.

The new section is adopted under Health and Safety Code, Chapter 771, §§771.051, 771.055 and 771.056; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to administer and implement 9-1-1 emergency communications.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303684
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: July 6, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 305-6933

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES

SUBCHAPTER Q. SAPOTE FRUIT FLY QUARANTINE

4 TAC §§19.170 - 19.179

The Texas Department of Agriculture (the department) adopts new §§19.170-19.179, concerning a quarantine for the sapote fruit fly, *Anastrepha serpentina* (Wiedemann), without changes to the proposal published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3668). The quarantine is adopted to prevent the spread of the sapote fruit fly into other citrus growing areas of Texas and to facilitate its eradication. The new sections require application of treatments to achieve eradication and prescribe specific restrictions on the handling and movement of quarantined articles. On January 6, 2003, an adult of the sapote fruit fly was detected in a McPhail trap located south of McAllen in Hidalgo County in a grapefruit orchard. Four additional flies were collected in the following locations: January 8, backyard grapefruit tree southeast of McAllen; January 9, grapefruit orchard near Donna, Hidalgo County; January 13, grapefruit orchard near Donna; and February 7, backyard sour orange tree south of McAllen. The quarantine trigger was met twice because two flies each at Donna and McAllen were less than 3 miles apart. The McPhail traps have been used in the Lower Rio Grande Valley for more than ten years to survey for infestations of the Mexican fruit fly, *Anastrepha ludens* (Loew). In addition to the Mexican fruit fly, the trap attracts other *Anastrepha* species as well as other fruit fly species. As a result of the detections, the department filed a sapote fruit fly emergency quarantine, then a revised emergency quarantine which is now in effect. The new sections establish a permanent sapote fruit fly quarantine.

New §19.170 states the basis for the quarantine and defines the quarantined pest. New §19.171 establishes the duration of the quarantine. New §19.172 designates the infested areas subject to quarantine. New §19.173 designates the non-infested areas subject to the quarantine. New §19.174 lists the articles subject to the quarantine. New §19.175 provides restrictions on the movement of articles subject to the quarantine. New §19.176 provides requirements for monitoring and handling and treatment of regulated articles located within the quarantined area. New §19.177 provides consequences for failure to comply with quarantine restrictions. New §19.178 provides for the appeal of action taken for failure to comply with the quarantine restrictions or requirements. New §19.179 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations.

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine for an infested area against an in-state pest if it determines that the pest is dangerous and is not widely distributed in this state; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and §12.020 which authorizes the department to enforce administrative penalties for violations of Chapter 71.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303676
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: July 8, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 463-4075

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TITLE 22. EXAMINING BOARDS

PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 231. ADMINISTRATION
SUBCHAPTER A. DEFINITIONS

22 TAC §231.1

The Board of Vocational Nurse Examiners adopts an amendment to §231.1(12) definition relating to Direct Supervision without changes to the proposed text published in the March 21, 2003, *Texas Register* (28 TexReg 2445) and will not be republished.

The adopted amendment addresses providing protection to the public by allowing direct supervision during the period of time the person is completing supervised employment or other criteria for re-licensure.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303496
Terrie L. Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: July 1, 2003
Proposal publication date: March 21, 2003
For further information, please call: (512) 305-7653

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CHAPTER 235. LICENSING
SUBCHAPTER A. APPLICATION FOR LICENSURE

22 TAC §235.18

The Board of Vocational Nurse Examiners adopts an amendment to §235.18, relating to Disabled Candidate without changes to the proposed text published in the March 21, 2003, *Texas Register* (28 TexReg 2445) and will not be republished.

The adopted amendment addresses change in test service.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303497
Terrie L. Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: July 1, 2003
Proposal publication date: March 21, 2003
For further information, please call: (512) 305-7653

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PART 20. TEXAS COMMISSION ON PRIVATE SECURITY

CHAPTER 422. PROHIBITIONS

22 TAC §422.3, §422.4

The Texas Commission on Private Security adopts new §422.3 and §422.4, concerning Prohibitions. Section 422.3 is adopted with minor changes to the proposed text as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3695). The text of the rule will be republished. Section 422.4 is adopted without changes to the proposed text as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3695) and will not be republished.

The new rules concern Return of Equipment and Good Standing Required for Renewal.

One individual spoke to the Commission in support of adopting §422.3.

The new rules are adopted under Chapter 1702, Texas Occupations Code, which provides the Texas Commission on Private Security with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

§422.3. Return of Equipment.

Licensees, registrants or commissioned security officers shall surrender immediately on demand or not later that the seventh day after termination of employment, any uniform, badge or other item of equipment , owned by the employer or provided by the employer, issued to the licensee, registrant or commissioned security officer by an employer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303499
Cliff Grumbles
Executive Director
Texas Commission on Private Security
Effective date: July 1, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 238-5869

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CHAPTER 427. ADMINISTRATIVE HEARINGS

22 TAC §§427.4 - 427.6

The Texas Commission on Private Security adopts new §§427.4-427.6, concerning Administrative Hearings, without changes to the proposed text as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3696) and will not be republished.

The new rules concern Default Judgments, Trial on the Merits and Appeal.

No comments were received regarding adoption of the rules.

The new rules are adopted under Chapter 1702, Texas Occupations Code, which provides the Texas Commission on Private Security with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303500
Cliff Grumbles
Executive Director
Texas Commission on Private Security
Effective date: July 1, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 238-5869

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CHAPTER 436. SUBSCRIPTION FEES

22 TAC §436.1

The Texas Commission on Private Security adopts new §436.1, concerning Renewal Subscription Fee, without changes to the proposed text as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3696) and will not be republished.

The new rule is necessary pursuant to Senate Bill 187 and Senate Bill 645, 77th Legislature, Regular Session. Each licensee, registrant, or commissioned security officer shall pay the following fee for occupational license renewal; $3.00 for renewals from $20 to $25, $5.00 for renewals from $50 to $100. This fee is in addition to the renewal fee.

No comments were received regarding adoption of the rules.

The new rule is adopted under Chapter 1702, Texas Occupations Code, which provides the Texas Commission on Private Security with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303501
Cliff Grumbles
Executive Director
Texas Commission on Private Security
Effective date: July 1, 2003
Proposal publication date: May 2, 2003
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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT

SUBCHAPTER A. WAIVER OF VISA RECOMMENDATION FOR PHYSICIANS

25 TAC §§13.1 - 13.8

The Texas Department of Health (department) adopts new §§13.1 - 13.8, concerning the waiver of visa rules for physicians serving in health professional shortage areas, who apply to the J-1 visa waiver program. Sections 13.1 - 13.8 are adopted with changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2216).

Federal law (8 USC §§1182(e) and 1184(l)) allows state departments of health to recommend waivers of visa rules in certain cases involving physicians, and this is known as the J-1 visa waiver program. These recommendations are also addressed by Texas Education Code, §51.949, which is expected to be repealed and recodified under the Health and Safety Code, §12.0127, effective September 1, 2003. The Health and Safety Code, §12.031 and §12.032, allows the Texas Board of Health (board) to set public health service fees for administrative services by rule. The purpose of these rules is to establish the criteria the department will use to make the recommendations and establish the fee allowed by these laws. These rules will

facilitate the service of foreign physicians in underserved areas and therefore benefit public health.

The following comments were received concerning the proposed rules.

Comment: Concerning proposed §13.1(3), renumbered as §13.1(4), one commenter suggested adding the words "graduate medical" in the following sentence: "Removal of the requirement that a J-1 visa holder must return to their country of origin for two years at the end of his/her graduate medical training".

Response: The department agrees. The suggested change was made to the paragraph.

Comment: Concerning proposed §13.1(7), renumbered as §13.1(8), one commenter suggested adding "psychiatry" to the definition.

Response: The issue of psychiatry and the qualified areas in which a psychiatrist may be recommended is addressed in §13.2(3). No changes were made as a result of this comment.

Comment: Concerning §13.2(1), one commenter suggested to add the wording "fully served" to describe areas no longer available due to previous waiver recommendations. Another commenter suggested defining fully served and eligible areas more specifically.

Response: The term "fully served" was added to the definitions as §13.1(2) and is also included in §13.2(1). The definition of an eligible area is more specific for §13.2(1), (2), and (3).

Comment: Concerning §13.2(4), one commenter suggested removing the term service area and including the terms HPSA or MUA.

Response: The department agrees. The changes were made as a result of this comment.

Comment: Concerning §13.2(1), one commenter suggested listing the criteria required to have an area to be designated as a Medically Underserved Area.

Response: The designation criteria are a separate issue and these rules are not the appropriate place to list them. No changes were made as a result of this comment.

Comment: Concerning §13.2(2), a comment was received concerning the rotation of pediatric subspecialist physicians at Driscoll Children's Hospital in Corpus Christi, and their regional clinics in McAllen, Brownsville, Harlingen, Victoria and Laredo.

Response: It is permissible for a visa waiver physician to split their time between more than one location. However, each site must reside in a Health Professional Shortage Area, or a Medically Underserved Area with a current shortage of physicians. No changes were made as a result of this comment.

Comment: Concerning §13.2(2), a comment was received concerning the designation of all freestanding, nonprofit children's hospitals as facility Health Professional Shortage Areas.

Response: The designation eligibility includes Health Professional Shortage Areas and Medically Underserved Areas with a current shortage of providers. Facilities with Health Professional Shortage Area designation are not eligible. No changes were made as a result of this comment.

Comment: Concerning §13.2(5), one commenter suggested adding the words "Bureau of Citizenship and Immigration Services".

Response: The department agrees. The language "Bureau of Citizenship and Immigrations Services" was added to §13.2(5). Also, the words "Bureau of Citizenship and Immigrations Services" were added to §13.6 and §13.7, and the words "Immigration and Naturalization Services" were deleted.

Comment: Concerning §13.3(b), one commenter suggested clarification or removal of the term "acquaintance."

Response: The department agrees, and has deleted the words "or acquaintance".

Comment: Concerning §13.4(b), one commenter suggested being more specific on the number of letters of support.

Response: The department agrees, and added the words "up to 6" for the letters of support.

Comment: Concerning §13.5(a), one commenter suggested that the contract include the wage and that a copy of the prevailing wage be included in the visa waiver application.

Response: The department agrees. The changes were made as a result of this comment.

Comment: Concerning §13.5(c)(1), (2), (3), (4) and (5), one commenter suggested that the list of items to be included in the contract should be more specific.

Response: The department agrees. The changes were made as a result of this comment.

Comment: Concerning §13.6(a), two comments were received suggesting that the 90 day notification to the Department of State and the Bureau of Citizenship and Immigration Services rule be removed. Another commenter suggested clarifying that the 90-day period begins upon receipt of the waiver.

Response: This is a Department of State rule and must be followed by state health departments; therefore the 90-day notification is not removed. The department agrees with the clarification that the 90 days begins upon receipt of the waiver and added the word "receiving" in front of the word "waiver".

Comment: Concerning §13.6(b), one commenter suggested including the language "in writing within ten days" to the section.

Response: The department agrees. The changes were made as a result of this comment.

Comment: Concerning §13.6(c) (1), (2), and (3), one commenter suggested that the section should be more specific regarding the department's verification activities.

Response: The department agrees. The changes were made as a result of this comment.

Comment: Concerning §13.8, one commenter suggested specific citation of the federal laws that apply to this program and removal of the requirement for letters of support for other waiver programs.

Response: The department agrees. The changes were made as a result of this comment.

Change: There were minor changes made due to department staff comments, which included changing upper case letters to lower case letters in several sections.

The comments were from institutions and were in favor of the rules and made recommendations. The commenters are two law offices, Pinchak & Associates, P.C., and Pederson & Freedman, L.L.P.; one hospital, Driscoll Children's Hospital, and department staff.

The new rules are adopted under Health and Safety Code, §12.032, which allows the board to set fees by rule for public health services; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§13.1. Definition of Terms.

The following words and terms when used in these sections, shall have the following meaning.

(1) Employer--A director of a health care facility where the physician will practice.

(2) Fully Served--An area with a population to provider ratio of 3000:1 or more physicians per capita.

(3) HPSA--Health Professional Shortage Area.

(4) J-1 Visa Waiver--Removal of the requirement that a J-1 visa holder must return to their country of origin for two years at the end of his/her graduate medical training. The waiver allows the J-1 visa holder to remain in the United States if they agree to practice in an underserved area.

(5) MUA--Medically Underserved Area.

(6) NHSC--National Health Service Corps.

(7) Operational--Providing health care services to patients.

(8) Primary Care Specialist--A physician who has a degree and specialization in internal medicine, general practice, family practice, pediatrics, or obstetrics/gynecology.

(9) Provider--A physician requesting a J-1 visa waiver.

§13.2. J-1 Visa Waiver Rules.

The following apply to faculty and non-faculty waivers.

(1) The Texas Department of Health (department) will consider a recommendation for a J-1 visa waiver in the area or areas designated by the Secretary of Health and Human Services as a HPSA or a MUA and are not fully served by J-1, NHSC or other primary care physicians. The HPSA or MUA must have a population to physician ratio of 3000:1 or fewer physicians per capita.

(2) Primary care specialists will be considered eligible to apply to areas designated as Primary Care HPSAs or MUAs.

(3) Psychiatrists will be considered eligible to apply to areas designated as Mental Health HPSAs or MUAs.

(4) The department will consider J-1 visa waivers for physicians who are non-primary care specialists when additional documentation is submitted supporting the need for the services of the specialist and the shortage of that specialty in the HPSA or MUA.

(5) The first 30 complete applications that meet federal and state requirements will be considered for recommendation. The submission of a complete waiver application to the department does not ensure that the department will recommend a waiver to the United States Department of State and the Bureau of Citizenship and Immigration Services.

(6) The employer or the employer's representative must submit the J-1 waiver request application to the department.

§13.3. Employer Rules.

(a) The department will not accept requests from employers who are physicians currently fulfilling their waiver obligation.

(b) The department will not recommend a waiver for a relative of the employer.

§13.4. Site Requirements.

(a) The health care facility named as the site of service in the application must be operational at the time of application.

(b) A waiver request must include up to 6 letters of support from community leaders, local physicians, hospital administrators, and/or the local health department, where applicable.

§13.5. Contract.

(a) The contract must include the wage to be paid over the contract period. Documentation that the wage meets the prevailing wage for the specialty for the area of practice must be included with the application packet. An example of a "prevailing wage" can be found at the United States Department of Labor web site at: http://www.workforcesecurity.doleta.gov/foreign/wages.asp.

(b) The contract must state that the employer and the provider agree that termination can be only for cause and not by mutual agreement.

(c) The contract must contain the following information:

(1) list of benefits, insurance to be provided to the provider;

(2) field of practice of the provider;

(3) practice site name, address and telephone number of the health care facility where the provider will work;

(4) hours of work;

(5) amount of leave; and

(6) statements that amendments shall adhere to state and federal J-1 visa waiver requirements.

(d) If applying under Education Code, §51.949, the applicant must demonstrate compliance with its provisions.

§13.6. Verification.

(a) The Department of State and the Bureau of Citizenship and Immigration Services shall be notified if the physician fails to begin practicing within 90 days of receiving waiver, or is found to not be practicing 40 hours at the site approved for waiver.

(b) The employer and/or the J-1 physician must notify the department in writing within 10 days if the contract is breached or terminated.

(c) The department will verify the following:

(1) compliance with subsection (a) of this section; and

(2) other information that supports the program goal of improving access to health care in underserved areas.

§13.7. Application Fee.

The department shall collect a fee of $2000 from each applicant who is granted a waiver of the two-year home residency requirement from the Bureau of Citizenship and Immigration Services. The fee shall be submitted to the department at the time of application. Part of the fees may be returned under the following circumstances:

(1) if the department recommends the waiver, and the Bureau of Citizenship and Immigration Services denies it, $1500 will be returned to the applicant; or

(2) if the applicant withdrawals the application before a recommendation is submitted by the department, $1700 will be returned to the applicant; or

(3) if at the time the application is received by the department, all 30 slots have been used for the fiscal year, $2000 will be returned to the applicant.

§13.8. Other Federal or State Requirements.

All waiver request applications must meet federal laws 8 USC §1182 and §1184. All waiver request applications for faculty physicians must meet applicable state laws (Texas Education Code, §51.949).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303573
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 3, 2003
Proposal publication date: March 14, 2003
For further information, please call: (512) 458-7236

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CHAPTER 14. COUNTY INDIGENT HEALTH CARE PROGRAM

SUBCHAPTER F. ADVISORY COMMITTEE

25 TAC §14.501

The Texas Department of Health (department) adopts an amendment to §14.501, concerning the Indigent Health Care Advisory Committee (committee). The section is adopted with one change to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3190).

The committee has provided advice to the Texas Board of Health (board) and the department in the area of the Indigent Health Care Program. The committee is established under the Health and Safety Code, §11.016, which allows the board to establish advisory committees. The committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §14.501 and has determined that reasons for adopting the section continue to exist; however, changes were necessary as described in this preamble.

The department published a Notice of Intention to Review for §14.501 in the *Texas Register* on September 4, 1998 (23 TexReg 9077). No comments were received due to publication of this notice.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110), which requires that each state agency adopt rules on advisory committees. The rules must state the purpose of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1999, the board established a rule relating to the Indigent Health Care Advisory Committee. The rule states that the committee will automatically be abolished on July 1, 2003. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until July 1, 2007.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to: continue the committee until July 1, 2007; specify that the committee appoints its presiding and assistant presiding officers; include additional requirements regarding statements by members; and clarify the components that the committee must include in an annual report to the board.

No public comments were received during the comment period for the rule. However, the department has made the following minor change due to a staff comment in order to provide consistency throughout the rule.

Change: Concerning §14.501(o)(2), the word "agency" was replaced with the word "department".

The amendment is adopted under Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner; and Government Code, §2110.005, which requires the department to adopt rules stating the purpose and tasks of its advisory committees. The review of this rule implements Government Code, §2001.039.

§14.501. Indigent Health Care Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Indigent Health Care Advisory Committee.

(2) The committee is established under the Health and Safety Code, §11.016, which allows the Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of the Indigent Health Care Program.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the Indigent Health Care Program.

(2) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By July 1, 2007, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 11 members consisting of four consumer and seven other representatives appointed by the board.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their terms until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on August 31st of each even- numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall select from its members the presiding officer and an assistant presiding officer to begin serving on July 1 of each odd-numbered year.

(1) Each officer shall serve until June 30th of each odd-numbered year. Each officer may holdover until his or her replacement is elected.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled by vote of the committee.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any

committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year.

(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each July. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303566
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 3, 2003
Proposal publication date: April 18, 2003
For further information, please call: (512) 458-7236

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CHAPTER 27. CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

25 TAC §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, 27.15

The Texas Department of Health (department) adopts new §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13 and 27.15, concerning case management for children and pregnant women with changes to the proposed text as published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2851).

Specifically, these new sections cover definitions; eligible recipients; case management service provisions; service limitations; applicant and provider qualifications; application process; case management provider review; and monitoring processes.

The adopted new rules for Case Management for Children and Pregnant Women will provide case management services to Medicaid eligible women of all ages who have a high risk pregnancy and to children from birth to 21 years of age with a health condition/health risk. Two programs, Medicaid Case Management for High Risk Pregnant Women and High Risk Infants (TCM/PWI) and Texas Health Steps Medical Case Management (THSteps MCM), will become one program due to the adopted repeal of §§32.301 - 32.305, 32.307, 33.501 - 33.506, and 37.81 - 37.86 of this title, and the adopted new Chapter 27. The new program will provide a greater continuity of services for all eligible recipients by allowing easier transition and coordination among services for family members.

The sections include changes made in response to comments, with the objective of clarifying the requirements of the program. Particular concerns and suggestions by stakeholders regarding issues such as the prior authorization requirement, the cessation of the intake as a reimbursed contact for providers, and the restrictions regarding solicitation of clients were raised during the public comment period and are addressed in this preamble.

Many comments were positive, with commenters in favor of merging the two programs. Several commenters felt the merged system would be beneficial for both providers and clients.

The most common questions and comments concerned the issues of prior authorization, the elimination of the intake as a reimbursable contact and the restrictions against the solicitation

of clients. Many commenters stated that the prior authorization requirement will be too burdensome for providers and place a barrier on services for clients. Several commenters stated that they believed state resources are not sufficient to implement the new program. However, in the interest of quality management, the assurance of non-duplication and enrollment of only eligible clients, the department upheld the prior authorization requirement.

Many commenters were concerned with eliminating the Targeted Case Management for Pregnant Women and Infants intake as a reimbursed contact. These commenters felt that the intake requires such a significant amount of time to complete that without reimbursement, providers would have to cut services or lay off staff. However, automatically reimbursing all intakes mean that a Targeted Case Management for Pregnant Women and Infants provider who performed an intake would always receive reimbursement--even if the recipient was ultimately determined ineligible for the service. As a result, the intake has historically been an over billed and misused contact.

Several comments indicated that changes to limit client solicitation would inhibit the case managers from informing interested recipients about the program and thus, eliminate client choice. However, the prohibitions will in fact protect client choice and will not prohibit case managers from informing interested recipients about the program. In most cases, it is the recipient that contacts the case manager to learn more information about the program; therefore, there should be no inhibition of case managers informing interested program participants.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the sections.

Change: Concerning proposed §27.1(1), a semi-colon was added after the term "facility operation" for proper format and style.

Change: Concerning proposed §27.1(2), "subchapter" was changed to "chapter" to reflect the proper terminology.

Change: Concerning proposed §27.1(6), the words "Case Management Provider" were changed to lower case for proper format and style.

Change: Concerning proposed §27.1(7), the word "Services" was changed to lower case for proper format and style.

Change: Concerning proposed §27.1(9), the word "same" was added between the terms "healthy" and "age" for clarity.

Change: Concerning proposed §27.1(12), a comma was inserted between the words "Diagnosis" and "and" to reflect the proper punctuation in the program name.

Change: Concerning proposed §27.1(13), the word "own" was changed to "biological" and the statement "a person or persons acting as the family of an individual; a foster family or identifiable support person or persons" was changed to "a person or persons acting as an individual's family, foster family or identifiable support person or persons" for clarity.

Change: Concerning proposed §27.1(15), the hyphen in "high-risk" was deleted for consistency.

Change: Concerning proposed §27.1(18), a definition for the term "prior authorization," was added, and the remaining definitions were renumbered accordingly.

Change: Concerning proposed §27.1(20), now renumbered as §27.1(21), the words "the name of" were inserted between the term "In Texas" and "the federal program" and the words ", is called Texas Health Steps" was deleted for clarity.

Change: Concerning proposed §27.3, "subchapter" was changed to "chapter" to reflect the proper title, and the hyphen in "high-risk" was deleted for consistency.

Change: Concerning proposed §27.3, "birth through age 20" was added for clarity.

Change: Concerning the title of proposed §27.5, the words "Service Provisions" were added to the title so that it now reads, "Case Management for Children and Pregnant Women Service Provisions" for clarity.

Change: Concerning proposed §27.5, the term "Case Management for Children and Pregnant Women's" was changed to "Case Management for Children and Pregnant Women" for proper format and style. The word "services" was added for clarity and "over utilization," was changed to "over-utilization" in the first paragraph of this section to reflect proper punctuation of this term.

Change: Concerning proposed §27.5(1)(A)(ii)(IV), the word "and" was added after "confidentiality;" to ensure proper format and style.

Change: Concerning proposed §27.5(1)(B), the statement "during which the" was added and the period and "The" deleted to combine the first and second sentence for clarity and the term "post partum" was changed to "post-partum" to reflect proper punctuation of this term.

Change: Concerning proposed §27.5(1)(B)(i), the word "the" was inserted between the words "of" and "complete" for clarity.

Change: Concerning proposed §27.7(b), the word "a" was inserted between the terms "for" and "billable", and "contact" was inserted following the word "billable." The term "Case Management for Children and Pregnant Women services" was deleted; the term "Comprehensive Visits and Follow up" was deleted and replaced with "billable." All of these changes were made to ensure clarity.

Change: Concerning proposed §27.7(c), the words "a billable" was inserted between "for" and "Case" to ensure clear and proper grammar.

Change: Concerning proposed §27.9(a)(3), the word "and" was deleted at the end of this paragraph to ensure proper format and style.

Change: Concerning proposed §27.9(a)(4)(B), the period at the end of this subparagraph was deleted and replaced with a semicolon to ensure proper format and style.

Change: Concerning proposed §27.9(c), the term "Federal Government" was changed to lower case for proper format and style.

Change: Concerning the first line of proposed §27.11, the term "Case Management Provider" was changed to lower case for proper format and style.

Change: Concerning proposed §27.11(3)(F), now renumbered as §27.11(3)(E), the term "claims" was changed to "contacts" for accuracy and clarity.

Change: Concerning proposed §27.11(3)(G)(vi), now renumbered as §27.11(3)(F)(vi), the period at the end of this clause

was deleted and replaced with a semi-colon to reflect proper format and style and punctuation.

Change: Concerning proposed §27.11(4), the statement "(relating to applicant qualifications and case management provider requirements)" was deleted for clarity.

Change: Concerning proposed §27.11(5), the word "TDH-" was changed to "department-" for clarity.

Change: Concerning proposed §27.11(5)(F)(ii), the statement "involvement in resolving case management problems" was moved to new §27.11(5)(F)(iii) and the period at the end of this clause was deleted and replaced with a semi-colon to reflect proper format and style.

Change: Concerning proposed §27.13(c), the term "subchapter" was deleted and replaced with "chapter" to ensure accuracy.

Change: Concerning proposed §27.13, new subsection (f) was added for clarity. That section reads, "Applications which do not meet department requirements will be denied," and the remainder of the subsections were renumbered accordingly.

Change: Concerning proposed §27.15(b), the term "Case Management Providers" were changed to lower case to ensure proper format and style.

The following comments were received concerning the rules. After each comment are the department's responses and any resulting change(s).

Comment: Concerning the chapter as a whole, many commenters stated they support the merger of TCM/PWI and THSteps MCM into one program.

Response: The department acknowledges the commenters' support. No changes were made as the result of these comments.

Comment: Concerning the chapter as a whole, many commenters stated their concern that the proposed rule changes would be harmful to children and pregnant women by making it harder to get case management services.

Response: The department disagrees. The rules will not make it more difficult for children and pregnant women to receive case management services. Rather, the rules will assure appropriate enrollment of eligible clients and non-duplication of services. No changes were made as a result of these comments.

Comment: Concerning the chapter as a whole, several commenters stated their concern that the proposed rule changes would lead to an increase in state spending because clients would not be able to access community organizations and appropriate medical care.

Response: The department disagrees. The rules will assure appropriate enrollment of eligible clients and non-duplication of services; they will not inhibit eligible clients in accessing needed services. No changes were made as a result of these comments.

Comment: Concerning the chapter as a whole, several commenters stated providers should be able to choose which population group they wish to serve rather than automatically having to provide services to both the TCM/PWI and THSteps MCM population.

Response: The department disagrees. Providers can in fact "choose" to limit the age ranges of clients served, although they must specify this in their application. No changes were made as the result of these comments.

Comment: Concerning the chapter as a whole, several commenters stated small case management providers will be more adversely affected by the proposed rules than will larger case management providers.

Response: The department disagrees. There is little disparity in the way the rules affect a small or a large case management provider. Any potential loss to the provider resulting from the elimination of the intake as a reimbursed service should be fairly minimal, regardless of provider size. No changes were made as the result of these comments.

Comment: Concerning the chapter as a whole, several commenters suggested withdrawing the proposed rules and continuing reimbursement for intake, replacing prior authorization with client registry and continuing reimbursement for first five visits without need for prior authorization.

Response: The department disagrees. The rules are being implemented to address the quality concerns and duplication of services currently at issue in the TCM/PWI and THSteps MCM services. No changes were made as the result of these comments.

Comment: Concerning the chapter as a whole, one commenter stated that the rules should be changed to include a statement that a qualified case manager must complete all documentation of services.

Response: The department agrees that a qualified case manager must document all billable contacts. As the rules require such documentation, no changes were made as the result of these comments.

Comment: Concerning the chapter as a whole, one commenter wondered if the program would allow independent contractors to serve as case managers.

Response: Currently, the program allows independently-enrolled case managers to serve as case management providers. The adoption of these rules would not result in any alteration of the ability of independent contractors to serve as case managers. This issue is not addressed in the rules and is a decision providers must make on their own. No change was made as a result of this comment.

Comment: Concerning the chapter as whole, one commenter asked if providers would have to re-apply when the programs merged.

Response: Providers will not have to re-apply when the programs merge. No change was made to the rules as a result of this comment.

Comment: Concerning the chapter as a whole, one commenter stated performing provider numbers should be issued to all case managers.

Response: The department is currently pursuing such an implementation. No change however was made to the rules as a result of this comment because such an issue does not need to be addressed in these rules.

Comment: Concerning the chapter as a whole, one commenter stated that language which requires the documentation of the client's continuing eligibility be added.

Response: The department agrees. Proposed §27.1(4) was changed to include the language "that continues to support eligibility of a" and "with an eligible" was deleted to address the change.

Comment: Concerning the chapter as a whole, one commenter stated that language be added to define how providers show documentation of justification of billing for more than one client in a family.

Response: The department disagrees. Eligibility criteria for individual clients is defined in the rule in §27.3. Each client within a family must meet the eligibility criteria defined. No changes were made as a result of this comment.

Comment: Concerning the chapter as a whole, one commenter asked that "should" be replaced by "must" in every section of the rules referring to documentation.

Response: The department agrees. The word "should" was replaced by "must" in §27.5(1)(A)(i) and (B) and the word "includes" was replaced by "must include" in §27.5(1)(A)(ii)(V).

Comment: Concerning proposed §27.1(9) and §27.3, one commenter asked that the term "at risk" be eliminated from eligibility criteria and that eligibility language be changed to include "medically fragile children" or "children with special health care needs."

Response: The department disagrees. The language, "with a health condition/health risk," covers a broader population than the terms "medically fragile children," and "children with special health care needs," to ensure that more children are potentially eligible for this service. No change was made as a result of this comment.

Comment: Concerning proposed §27.5(2), many commenters stated that the elimination of the intake as a reimbursable service will inhibit the case manager/client relationship and serve as a barrier to service provision.

Response: The department disagrees. The elimination of the intake as a reimbursable service will not inhibit the case manager/client relationship or serve as a barrier to service provision. The information collected for the purpose of the intake is needed to determine eligibility. Client/case manager rapport may be further developed during the comprehensive visit. No changes were made as a result of these comments.

Comment: Concerning proposed §27.5(2), some commenters stated that the elimination of the intake as a reimbursable service will reduce the number of participating providers.

Response: The department disagrees. No other component of the Texas Health Steps Comprehensive Care Program (CCP) allows for the reimbursement of the intake. By making this change through the combination of the programs, the department will be in line with the rest of CCP. No changes were made as a result of these comments.

Comment: Concerning proposed §27.5(2), some commenters stated that the elimination of the intake as a reimbursable service will result in providers potentially providing hours of intake services only to eventually discover the recipient is ineligible for case management services which will result in the provider performing significant amounts of services without pay.

Response: The department disagrees. The intake normally takes about five to ten minutes to complete and can be completed by telephone. Thus, it should not result in case managers providing hours of unpaid work if it is ultimately determined that the client is ineligible for case management services. No changes were made as a result of these comments.

Comment: Concerning proposed §27.7, many commenters stated that requiring prior authorization of all services will greatly increase the amount of paperwork they will be required to submit.

Response: The department disagrees. The paperwork that must be submitted will be minimal. No changes were made as the result of these comments.

Comment: Concerning proposed §27.7, many commenters stated that requiring prior authorization of all services will result in delayed and less frequent service provision to clients.

Response: The department disagrees. Clients will be approved for contacts based on their level of medical and psychosocial need. The prior authorization process will not delay service provision; if an emergency request is submitted, it must be processed quickly. Currently, medical case management is the only CCP service that does not require prior authorization for all of its services. With the adoption of these rules, case management procedures will be consistent with that of the other CCP services. No changes were made as the result of these comments.

Comment: Concerning proposed §27.7, many commenters stated the department case management program lacks sufficient staff to implement the prior authorization of services required by the proposed rules.

Response: The department disagrees. The staffing issue has been acknowledged and was included in the cost estimate. No changes were made as the result of these comments.

Comment: Concerning proposed §27.7, some commenters stated the department should change the prior authorization system to pay for an initial contact and then prior authorize the remaining contacts based on information on the needs assessment and service plan.

Response: The department disagrees. Prior authorization of all services is now a requirement, pursuant to these rules, in order to ensure only eligible clients are enrolled in the Case Management for Children and Pregnant Women program and receive program services. No changes were made as a result of these comments.

Comment: Concerning proposed §27.7, some commenters stated that the information included in the intake is insufficient for department staff to appropriately determine client eligibility and service needs.

Response: The department disagrees. The intake will be revised to require information regarding the medical and psychosocial needs of the client. The intake contains enough information to determine client eligibility and the amount of client contacts necessary to implement services. No changes were made as the result of these comments.

Comment: Concerning proposed §27.7, some commenters felt that the implementation of prior authorization through the adoption of the rules will result in a client's inability to receive a monthly contact.

Response: The department disagrees. Clients will be approved for contacts based on their level of medical and psychosocial need. If a client's needs warrant a monthly contact, sufficient documentation should be submitted to authorize these services. No changes were made as the result of these comments.

Comment: Concerning proposed §27.7, one commenter was curious about the type of the department program staff that will be reviewing prior authorization requests.

Response: Prior authorizations will be reviewed by case management program specialists. No changes were made to the rules as a result of this comment.

Comment: Concerning proposed §27.7, one commenter wanted to know if there would be a process available to appeal the denial of prior authorization requests.

Response: Under state and federal law, any request for Medicaid services that is denied may be appealed through the fair hearing process. This process is currently in place and will continue to be available for appealing any denial of Medicaid service. No changes were made to the rules as a result of this comment.

Comment: Concerning proposed §27.9, several commenters stated the new case manager qualifications are "unfair."

Response: The department disagrees. Applicants are now required to have more years of experience, which will ensure better quality of service provision. This should not affect our current case managers because current case managers lacking the required experience can still participate as case managers. No changes were made as the result of these comments.

Comment: Concerning proposed §27.9, several commenters stated case managers currently providing services but lacking the new qualification requirements of proposed §27.9, should be grandfathered in so that they can continue to provide services.

Response: The department agrees. Section 27.9(b) has been amended to delete the requirement that case managers approved as providers and providing services before the implementation date of these rules can continue to provide case management services only as long as that case manager does not leave the employ of that agency. This requirement has been replaced by the words, "if the case manager presents a certificate issued by the department attesting that the case manager possesses experience providing services for an approved Targeted Case Management for Pregnant Women and Infants or Texas Health Steps Medical Case Management agency before the implementation date of these rules." The statement "is eligible to" was changed to "may" and the statement "to provide" was changed to "providing" for clarity.

Comment: Concerning §27.9(b), one commenter stated that case managers with a temporary or provisional license should not be included in the clause allowing previous case managers to continue to provide services.

Response: The department agrees. The term "licensure" was deleted from §27.9(b) so that case managers currently providing either TCM/PWI or THSteps MCM services must meet the licensure requirements of this chapter in order to continue to be eligible case managers.

Comment: Concerning proposed §27.11(3)(C), one commenter stated the requirement of a comprehensive resource directory was too difficult to produce.

Response: The department agrees. This requirement has been deleted since referral directories are available from resources in local communities, and the remainder of the paragraphs was renumbered accordingly.

Comment: Concerning proposed §27.11(3)(F), now renumbered as §27.11(3)(E), one commenter asked if a provider could contract out the provider's accounts receivable system.

Response: A provider may contract out their accounts receivable system, but the provider is still responsible for the implementation of this component. No changes were made to the rules as a result of this comment.

Comment: Concerning proposed §27.11(3)(G), now renumbered as §27.11(3)(F), many commenters stated this section's prohibitions on client solicitation will inhibit case managers from telling interested recipients about the program and thus, eliminate client choice.

Response: The department disagrees. The prohibitions will not prohibit case managers from informing interested recipients of the case management program. In most cases, a recipient contacts the case manager to learn more information about the program; therefore, there should be no such inhibition. The client will continue to have choice of providers. No changes were made as a result of these comments.

Comment: Concerning proposed §27.11(3)(G)(ii), now renumbered as §27.11(3)(F)(ii), many commenters expressed dissatisfaction with certain rule language. In particular, commenters felt that the terms "can reasonably be interpreted as intended to market the provider's services" were both overbroad and vague.

Response: The department agrees. The statement "can reasonably be interpreted as intended to market the provider's services" was changed to "impede client choice" for clarity.

Comment: Concerning proposed §27.11(3)(G)(iii), now renumbered as §27.11(3)(F)(iii), many commenters expressed dissatisfaction with certain rule language. In particular, commenters felt that the terms "materially misleading materials" were both overbroad and vague.

Response: The department agrees. The word "materially" was deleted from "materially misleading materials" for clarity.

Comment: Concerning proposed §27.11(3)(G)(vi), now renumbered as §27.11(3)(F)(vi), several commenters stated that prohibiting providers from entering into exclusive relationships with referral sources is unfair.

Response: The department disagrees. Such prohibitions are consistent with state and federal law; moreover, any provider currently engaging in such actions should immediately cease this behavior. No changes were made as a result of these comments.

Comment: Concerning proposed §27.13(g), now renumbered as §27.13(h), one commenter asked about application approval guidelines.

Response: New criteria has been added to the rules to address this issue. The rules have been amended accordingly. The new language may be found in new §27.13(f) which states that applications which do not meet department requirements will be denied. The rest of the subsections were renumbered accordingly.

Comment: Concerning proposed §27.13(g), now renumbered as §27.13(h), one commenter asked about the rationale behind requiring rejected applicants to wait six months before resubmitting a revised application for review.

Response: The rational for the six month wait period is to ensure case management staff have adequate time to review all application documentation. Often, when an application is submitted, additional documentation may be sent by the applicant several months after filing the application. No change was made as a result of this comment.

The following commenters were in favor of the merger of the two programs, but had concerns or questions about the rules, which they generally did not support: Community Outreach Referral, The Family Plan and Bona Healthy Start.

The following commenters had concerns, questions, and/or suggestions regarding the rules, which they generally did not support: ReNas Family Services, Bexar County Case Management Coalition, Rio Health Steps, Child Study Clinic, TLCare, Catholic Charities, New Life Perinatal Health Care Services, Moving Ahead Family Services, Catholic Charities, Empowerment Now, Guardian Angel, ACCESS, Family Advocacy Case Management Services, Family Empowerment, Bienestar Case Management for Children and Pregnant Women, and Medical Social Services.

The department adopts the repeal of §§32.301 - 32.305 and §32.307, concerning case management for high risk pregnant women and high risk infants. Specifically, these sections cover definitions; eligible individuals; case management services; service limitations; provider qualifications and the right to appeal. These sections are repealed as they were repeated in §§37.81 - 37.86. Sections 32.301 - 32.305 and §32.307 were not repealed when §§37.81 - 37.86 were adopted.

The department further adopts the repeal of Early and Periodic Screening, Diagnosis, and Treatment, Subchapter J, Texas Health Steps Medical Case Management, §§33.501 - 33.506. Specifically, these sections cover definitions; eligible recipients; THSteps Medical Case Management Services; service limitations; applicant and provider qualifications; application, review and monitoring process. These sections are being repealed in an effort to integrate services to the eligible population for case management services: children with a health condition/health risk birth to 21 years and/or high risk pregnant women of all ages.

The department at the same time adopts the repeal of §§37.81 - 37.86, concerning Medicaid case management for high risk pregnant women and high risk infants. Specifically, these sections cover introduction; definitions; case management services; provider qualifications; application and review process; and documents adopted by reference.

The department provides health services to women and children in Texas under the authority of the Health and Safety Code, Chapter 32; the State Appropriations Act; and the Social Security Act, Title V. The Targeted Case Management Program for High Risk Pregnant Women and High Risk Infants was established under the authority of the Social Security Act, Title XIX, §1915(g), authorizing states to provide case management as a distinct service to targeted populations, through a waiver from the Health Care Financing Administration (HCFA). HCFA is now known as the Center for Medicare and Medicaid Services (CMS). The Health and Human Services Commission (HHSC) provides authority to the department to propose rules to administer certain Medicaid program services in Texas.

The new sections are adopted under the Health and Safety Code, §12.001, which provides the Board of Health (board) with the authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; the Health and Safety Code, Chapter 32, which provides the board with the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; the Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and the Government Code, §531.021, which provides the Health and Human Services Commission (HHSC) with the authority to propose rules to administer the state's medical assistance program, and are submitted by the Texas Department of Health under its agreement with HHSC to operate the EPSDT program, and as authorized under §1.07 of the Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2.

§27.1. Definition of Terms.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Access--The ability of an eligible recipient to obtain health and health-related services, as determined by factors such as: the availability of THSteps services; service acceptability to the eligible child, family, and/or pregnant woman; the location of health care facilities and other resources; transportation; hours of facility operation; and length of time available to see the healthcare provider.

(2) Applicant--An agency, organization, or individual who submits an application to the department to provide Case Management for Children and Pregnant Women under this chapter and who meets the applicant qualifications and requirements as stated in §27.9 and §27.11 of this title (relating to Applicant Qualifications and Case Management Provider Requirements).

(3) Application process--Submission of an application to provide Case Management for Children and Pregnant Women and the department's ensuing review and disposition of the application.

(4) Billable contact--A documented Comprehensive Visit or Follow-up contact that continues to support eligibility of a recipient, by an approved case manager who provides an eligible case management service, as defined in §27.5 of this title (relating to Case Management and Pregnant Women).

(5) Board--The Texas Board of Health.

(6) Case manager--An individual who provides Case Management for Children and Pregnant Women services either independently or as an employee of a case management provider.

(7) Case management provider--An agency or individual approved by the department to provide Case Management for Children and Pregnant Women services and enrolled as a Medicaid provider.

(8) Case Management for Children and Pregnant Women--The federal enhancement service which assists eligible recipients in gaining access to medically necessary medical, social, educational, and other services.

(9) Children with a health condition/health risk--Children who have or are at risk for a medical condition, illness, injury, or disability that results in limitation of function, activities or social roles in comparison with healthy same age peers in the general areas of physical, cognitive, emotional, or social growth and development.

(10) Continuity of care--The degree to which: the care of a child is provided by the same medical home or primary care provider; the system of care remains stable and services are consistent, unduplicated and uninterrupted.

(11) Department--The Texas Department of Health.

(12) EPSDT--Early and Periodic Screening, Diagnosis, and Treatment program. All states participating in the Medicaid program must offer EPSDT to children under age 21 who qualify for Medicaid. EPSDT provides medical and dental services to Medicaid and Texas Health Steps clients under age 21 years. In Texas, EPSDT is known as Texas Health Steps (THSteps).

(13) Family--A basic unit in society having at its nucleus: one or more adults living together and cooperating in the care and rearing of their biological or adopted children; a person or persons acting as an individual's family, foster family or identifiable support person or persons.

(14) Health and health-related services--Services which are provided to meet the comprehensive (preventive, primary, tertiary and specialty) health needs of the eligible recipient, including but not limited to, well care and dental check ups, immunizations, acute care visits, pediatric specialty consultations, physical therapy, occupational therapy, audiology, speech language services, mental health professional services, pharmaceuticals, medical supplies, prenatal care, family planning, adolescent preventive health, durable medical equipment, nutritional supplements, prosthetics, eye glasses, and hearing aids.

(15) High risk pregnant women--Women who are pregnant and have one or more high risk medical and/or personal/psychosocial condition(s) during pregnancy.

(16) Preventive services--Services that include health counseling and education, immunizations, wellness care, nutritional supplementation, family planning and screening aimed at avoiding illness and/or disability.

(17) Primary services--Services that include care for minor illnesses, injuries and abnormalities discovered through screenings.

(18) Prior authorization--A condition for reimbursement, the prior authorization process requires all providers of Case Management for Children and Pregnant Women services to submit documentation of the requested services for approval before such services may be authorized for payment.

(19) State--The State of Texas.

(20) Tertiary services--Services that include care for major illnesses and injuries, and chronic or disabling conditions.

(21) Texas Health Steps Program (THSteps)--In Texas, the name of the federal program known as EPSDT, which is required of states participating in the Medicaid program.

§27.3. Eligible Recipients.

Clients eligible for case management services under this chapter must be either children birth through age 20 with a health condition/health risk or high risk pregnant women who are:

(1) Medicaid eligible in Texas;

(2) in need of services to prevent illness(es) or medical condition(s), to maintain function or slow further deterioration; and

(3) desire case management.

§27.5. Case Management for Children and Pregnant Women Service Provisions.

Case Management for Children and Pregnant Women services, as defined in §27.1 of this title (relating to Definitions), are services provided to assist eligible recipients in gaining access to medically necessary medical, social, educational and other services for which federal financial participation is available in order to: encourage the use of cost-effective health and health-related care; make referrals to appropriate community resources; discourage over-utilization or duplication of services; and reduce morbidity and mortality. Case Management for Children and Pregnant Women is not a "gatekeeper" function.

(1) The following contacts are billable:

(A) Comprehensive Visit--a face-to-face visit that includes the development of:

(i) Family Needs Assessment--a written evaluation of all issues that impact the short and long term health and well being of the eligible recipient and his/her family. Together, the case manager and family shall assess the medical, social, educational and other medically necessary service needs of the eligible recipient. Documentation of the Family Needs Assessment must include, at a minimum:

(I) the assessment of the medical, social/family, nutritional, educational, vocational, developmental and health care transportation needs;

(II) individualized assessment of the client; and

(III) the case manager's dated signature.

(ii) Service Plan--the written summary which:

(I) documents the services to be accessed;

(II) identifies the individual responsible for contacting the appropriate health and human service providers;

(III) designates the time frame within which the eligible recipient should access services;

(IV) may be sent to the medical provider or others as appropriate in accordance with the limits of confidentiality; and

(V) must include, at a minimum: the interventions and referrals for addressing needs identified in the Family Needs Assessment; the time frame for the client to access services; the client/parent/guardian's and case manager's dated signatures.

(B) Follow-up contact--a face-to-face or telephone contact with the eligible recipient and his/her family during which the case manager and the client/family review and reassess the client/family's needs, determine what referrals and services specified in the Service Plan have been received by the client/family, and develop appropriate modifications to the Service Plan. The Follow-up contact includes the review of the referrals that have occurred or are still needed to complete the Service Plan and meet the client/family's needs. Follow-up contacts for children should occur as needed. Follow-up contacts for pregnant women should occur as needed through the 59th day post-partum. Documentation of the Follow-up contacts must include, at a minimum:

(i) a review of the complete Service Plan;

(ii) efforts to ascertain on an ongoing basis which needs specified in the Service Plan have been addressed with appropriate referrals provided and services accessed; and

(iii) evidence of problem solving with client/parent/guardian when needs are not addressed or referrals not accessed.

(2) Case Management for Children and Pregnant Women services will include a non-billable intake with each client/family. The intake will include the collection of demographic information and determination of the client's eligibility.

(3) Only one billable contact per client shall be billed per day.

§27.7. Service Limitations.

(a) Case Management for Children and Pregnant Women services are not reimbursable if they are duplicative of other billed, comprehensive Medicaid case management services.

(b) Following intake completion, the initial prior authorization request for a billable contact must be supported by required documentation and submitted to the department for review and disposition. The amount of billable contacts that are prior authorized will be based on

the client's level of need, level of medical involvement and complicating psychosocial factors.

(c) Any additional requests for a billable Case Management for Children and Pregnant Women services must also be prior authorized. Required documentation must be submitted to the department for review and disposition before any additional services may be prior authorized.

§27.9. Applicant Qualifications.

(a) The minimum qualifications for a Case Management for Children and Pregnant Women applicant are:

(1) completion and approval of an application for Case Management for Children and Pregnant Women as defined in §27.1 of this title (relating to Definitions);

(2) agreeing to comply with the department rules, policies and procedures on Case Management for Children and Pregnant Women and the applicable statutory provisions;

(3) agreeing to comply with applicable state and federal laws governing participation of providers in the Medicaid program;

(4) employment of case managers with the following qualifications:

(A) Registered nurse (with a diploma, an associate's, bachelor's or advanced degree) or Social Worker (with bachelor's or advanced degree), currently licensed by the respective Texas licensure board and whose license is not temporary or provisional in nature; and

(B) possessing two years of cumulative paid full-time work experience or two years of supervised, full-time educational internship/practicum experience in the past ten years with children, up to age 21, and/or pregnant women. Experience must include assessing the psychosocial and health needs of and making community referrals for these populations;

(5) agreeing to comply with all licensure requirements of the case manager(s) respective state licensure/examining boards including the obligation to report all suspected child abuse/neglect; and

(6) knowledge of and coordination with providers of health and health-related services and other active community resources.

(b) A case manager employed in an approved Targeted Case Management for Pregnant Women and Infants or Texas Health Steps Medical Case Management agency at the time of implementation of these rules but who does not meet the educational and/or experience requirements outlined in subsection (a)(4)(A) and (B) of this section, may continue providing case management services, if the case manager presents a certificate issued by the department attesting that the case manager possesses experience providing services for an approved Targeted Case Management for Pregnant Women and Infants or Texas Health Steps Medical Case Management agency before the implementation date of these rules.

(c) An applicant under investigation or being sanctioned by the department or any other State of Texas or federal governmental agency will not be approved as a case management provider.

§27.11. Case Management Provider Requirements.

In order to remain a case management provider, an individual or agency must:

(1) comply with applicable state and federal laws and regulations governing participation of providers in the Medicaid program;

(2) maintain provider status with the department;

(3) develop and maintain a system for Case Management for Children and Pregnant Women services incorporating the following elements:

(A) case Management for Children and Pregnant Women services in locations convenient for the eligible recipient to facilitate face-to-face contact;

(B) provision of Case Management for Children and Pregnant Women services in order to assist eligible recipients in accessing necessary medical, social, educational, and other services;

(C) an internal quality assurance plan that includes, but is not limited to, chart reviews and staff observation;

(D) a current list of opened and closed client records;

(E) an accounts receivable system through which billed contacts will be tracked and matched with paid claims and client records to assure claims are billed and paid for correct dates of service, were billed with appropriate procedure codes and are not duplicative of other claims for the same client;

(F) outreach activities that assure individualized referrals. The following activities may impede client choice and therefore are prohibited:

(i) door to door, telephone or other cold-call marketing or solicitation of clients by providers;

(ii) the distribution of materials to Case Management for Children and Pregnant Women recipients that impede client choice;

(iii) the distribution of any false or misleading materials to Case Management for Children and Pregnant Women recipients;

(iv) obtaining lists of Medicaid clients without a specific referral;

(v) offering incentives for enrollment into case management services; and/or

(vi) entering into exclusive referral relationships with referral sources;

(4) assure Case Management for Children and Pregnant Women services will be provided by approved case managers who meet the qualifications defined in §27.9 and §27.11 of this title;

(5) assure that approved case managers:

(A) have received department-approved education and training regarding Case Management for Children and Pregnant Women;

(B) have the opportunity to participate in appropriate Medicaid, case management and THSteps workshops, seminars, and training;

(C) assume responsibility for all Case Management for Children and Pregnant Women services they provide to eligible recipients, including services by their designated support staff;

(D) participate in relevant motion or cost studies;

(E) agree to permit the department or its designee access to the Case Management for Children and Pregnant Women provider's records, and permit direct observation of case management activities for the purpose of determining the provider's suitability to continue participation as a Case Management for Children and Pregnant Women provider; and

(F) participate in local and/or regional case management systems/coalitions in accordance with program policies to assure cooperation and coordination with local health departments, the department's public health region(s), school districts and other Medicaid-approved case management providers as evidenced by:

(i) participation in community coalition meetings in accordance with program policy;

(ii) collaboration in planning case management delivery systems; and

(iii) involvement in resolving case management problems;

(6) share information, within the limits of confidentiality, with the department and collaborating agencies to facilitate referral and monitoring of eligible recipients; and

(7) comply in a timely manner with all department data collection and reporting requirements.

§27.13. Application Process.

(a) Applications to become a Case Management for Children and Pregnant Women provider may be obtained by contacting the department or by accessing the department website.

(b) Applicants must include copies of documentation of all agency licenses, contracts and/or written agreements with their application.

(c) Applications must be typed and accompanied by all required supporting documentation set out in this chapter. An original must be sent to the appropriate department regional office and one copy of the application must be submitted to the department central office.

(d) All applications shall be reviewed by the department staff. The review process shall be completed within 20 working days following receipt of an application.

(e) Incomplete applications shall not be approved and shall be returned to the applicant for completion.

(f) Applications which do not meet department requirements will be denied.

(g) Applicants will be notified in writing of approval or nonapproval by the department. Applicants must still enroll as Medicaid providers through Medicaid provider enrollment.

(h) Applicants who have submitted complete applications and who are not approved by the department to provide case management services must wait, at a minimum, 6 months before resubmission of a new application.

§27.15. Case Management Provider Review and Monitoring Process.

(a) Approved providers will be monitored on an as-needed basis for compliance with rules and policies.

(b) Case managers or case management providers who do not comply with program requirements may be terminated, placed on probationary status, referred to appropriate professional licensure entities for review, and/or referred for fraud and abuse investigation as described in department policies and procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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CHAPTER 32. CASE MANAGEMENT SUBCHAPTER C. CASE MANAGEMENT FOR HIGH-RISK PREGNANT WOMEN AND HIGH-RISK INFANTS

25 TAC §§32.301 - 32.305, 32.307

The Texas Department of Health (department) adopts the repeal of §§32.301 - 32.305 and §32.307, concerning case management for high-risk pregnant women and high-risk infants. The repeal is adopted without changes to the proposed repeal as published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2855) and, therefore, the repeal will not be republished.

Government Code, §2001.039, requires that each agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§32.301 - 32.305 and §32.307 and determined that reasons for repealing these sections exist; however, new rules are adopted in a new chapter as described in this preamble.

The department published a Notice of Intention to Review the sections in the *Texas Register* (24 TexReg 10378) on November 19, 1999. No comments have been received.

The repeal of §§32.301 - 32.305 and §32.307 will allow the combination of the affected sections in new Chapter 27, entitled Case Management for Children and Pregnant Women, of this title. Combining these sections in this new chapter will ensure integration of services to the eligible population for case management services: children with a health condition/health risk, birth to 21 years, and/or high-risk pregnant women of all ages. Specifically, the repealed sections cover definitions; eligible individuals; case management services; service limitations; provider qualifications, and the right to appeal. The purpose of the new chapter is to continue to make available medically necessary Texas Health Steps ("THSteps") medical case management mandated by the federal Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program and case management services for other eligible women and children.

No comments were received regarding the proposal to repeal this subchapter.

The department also adopts the repeal of Early and Periodic Screening, Diagnosis, and Treatment, Subchapter J, Texas Health Steps Medical Case Management, §§33.501 - 33.506, under a separate publication. Specifically, these repealed sections cover definitions; eligible recipients; THSteps Medical Case Management Services; service limitations; applicant and provider qualifications, and application, review and monitoring process. The sections will be integrated in new Chapter 27.

The department at the same time is adopting the repeal of §§37.81 - 37.86 of this title, concerning Medicaid case management for high risk pregnant women and high risk infants, under a separate publication. Specifically, these sections cover

introduction; definitions; case management services; provider qualifications; application and review process, and documents adopted by reference. These sections will be integrated in the new Chapter 27 of this title.

The department also adopts new Chapter 27, Case Management for Children and Pregnant Women, §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13 and 27.15, under a separate publication. The new sections combine case management programs to meet the needs of pregnant women of all ages and children with a health condition/health risk, birth to 21 years. Specifically, these new sections cover definitions; eligible recipients; case management service provisions; service limitations; applicant and provider qualifications; and application, review and monitoring processes.

The adopted new rules for Case Management for Children and Pregnant Women will provide case management services to Medicaid eligible women of all ages who have a high risk pregnancy and to children from birth to 21 years of age with a health condition/health risk. Two programs, Medicaid Case Management for High Risk Pregnant Women and High Risk Infants and the Texas Health Steps Medical Case Management were combined into one program in the new Chapter 27 upon the repeal of §§32.301 - 32.305, 32.307, 33.501 - 33.506 and 37.81 - 37.86. The new program will provide a greater continuity of services for all eligible recipients.

The repeals are adopted under the Health and Safety Code, §12.001, which provides the Board of Health (board) with the authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; the Health and Safety Code, Chapter 32, which provides the board with the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; the Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and the Government Code, §531.021, which provides the Health and Human Services Commission (HHSC) with the authority to propose rules to administer the state's medical assistance program, and are submitted by the Texas Department of Health under its agreement with HHSC to operate the EPSDT program, and as authorized under §1.07 of the Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 33. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

SUBCHAPTER J. TEXAS HEALTH STEPS MEDICAL CASE MANAGEMENT

25 TAC §§33.501 - 33.506

The Texas Department of Health (department) adopts the repeal of §§33.501 - 33.506, concerning the Texas Health Steps Medical Case Management. The repeal is adopted without changes to the proposed repeal as published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2869) and, therefore, the repeal will not be republished.

Government Code, §2001.039, requires that each agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§33.501 - 33.506 and determined that reasons for repealing these sections exist; however, new rules are adopted in a new chapter as described in this preamble.

The department published a Notice of Intention to Review the sections in the *Texas Register* (24 TexReg 11129) on December 10, 1999. No comments have been received.

The repeal of §§33.501 - 33.506 will allow the combination of the affected sections in new Chapter 27, entitled Case Management for Children and Pregnant Women, of this title. Combining these sections in a new chapter will ensure integration of services to the eligible population for case management services: children with a health condition/health risk, birth to 21 years, and/or high-risk pregnant women of all ages. Specifically, the repealed sections cover definitions; eligible recipients; THSteps Medical Case Management services, services limitations, applicant and provider qualifications; and application, review and monitoring processes. The purpose of the new chapter is to continue to make available medically necessary Texas Health Steps ("THSteps") medical case management mandated by the federal Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program and case management services for other eligible women and children.

No comments were received regarding the proposal to repeal this subchapter.

The department also adopts the repeal of §§32.301 - 32.305 and §32.307 of this title, concerning case management for high-risk pregnant women and high-risk infants, under a separate publication. Specifically, these sections cover definitions; eligible individuals; case management services; service limitations; provider qualifications and the right to appeal. These sections are adopted for repeal as they were repeated in §§37.81 - 37.86. Sections 32.301 - 32.305 and §32.307 were not repealed when §§37.81 - 37.86 were adopted. The sections are integrated in new Chapter 27.

The department at the same time is adopting the repeal of §§37.81 - 37.86 of this title, concerning Medicaid case management for high risk pregnant women and high risk infants, under a separate publication. Specifically, these sections cover introduction; definitions; case management services; provider qualifications; application and review process, and documents adopted by reference. These sections are integrated in the new Chapter 27 of this title.

The department also adopts new Chapter 27, Case Management for Children and Pregnant Women, §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13 and 27.15, under a separate publication. The new sections combine case management programs

to meet the needs of pregnant women of all ages and children with a health condition/health risk, birth to 21 years. Specifically, these new sections cover definitions; eligible recipients; case management service provisions; service limitations; applicant and provider qualifications; and application, review and monitoring processes.

The adopted new rules for Case Management for Children and Pregnant Women will provide case management services to Medicaid eligible women of all ages who have a high risk pregnancy and to children from birth to 21 years of age with a health condition/health risk. Two programs, Medicaid Case Management for High Risk Pregnant Women and High Risk Infants and the Texas Health Steps Medical Case Management were combined into one program in the new Chapter 27 upon the repeal of §§32.301 - 32.305, 32.307, 33.501 - 33.506, and 37.81 - 37.86. The new program will provide a greater continuity of services for all eligible recipients.

The repeals are adopted under the Health and Safety Code, §12.001, which provides the Board of Health (board) with the authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; and under the Health and Safety Code, Chapter 32, which provides the board with the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; the Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and the Government Code, §531.021, which provides the Health and Human Services Commission (HHSC) with the authority to propose rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with HHSC to operate the EPSDT program, and as authorized under §1.07 of the Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES
SUBCHAPTER E. MEDICAID CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN AND HIGH RISK INFANTS

25 TAC §§37.81 - 37.86

The Texas Department of Health (department) adopts the repeal of §§37.81 - 37.86, concerning case management for high-risk pregnant women and high-risk infants. The repeal is adopted without changes to the proposed repeal as published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2871) and, therefore, the repeal will not be republished.

Government Code, §2001.039, requires that each agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§37.81 - 37.86 and determined that reasons for repealing these sections exist; however, new rules are adopted in a new chapter as described in this preamble.

The department published a Notice of Intention to Review the sections in the *Texas Register* (25 TexReg 602) on January 28, 2000. No comments have been received.

The repeal of §§37.81 - 37.86 will allow the combination of the affected sections in new Chapter 27, entitled Case Management for Children and Pregnant Women, of this title. Combining these sections in this new chapter will ensure integration of services to the eligible population for case management services: children with a health condition/health risk, birth to 21 years, and/or high-risk pregnant women of all ages. Specifically, the repealed sections cover introductions, definitions, case management services, provider qualifications, application and review process, and documents adopted by reference. The purpose of the new chapter is to continue to make available medically necessary Texas Health Steps ("THSteps") medical case management mandated by the federal Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program and case management services for other eligible women and children.

No comments were received regarding the proposal to repeal this subchapter.

The department also adopts repeal of §§32.301 - 32.305 and §32.307, of this title, concerning case management for high-risk pregnant women and high-risk infants, under a separate publication. Specifically, these sections cover definitions; eligible individuals; case management services; service limitations; provider qualifications, and the right to appeal. These sections are adopted for repeal as they were repeated in Chapter 37, §§37.81 - 37.86. Sections 32.301 - 32.305 and §32.307 were not repealed when §§37.81 - 37.86 were adopted. The repeal is also necessary in order to combine the affected sections in a new chapter entitled Chapter 27, Case Management for Children and Pregnant Women.

The department at the same time is adopting the repeal of Early and Periodic Screening, Diagnosis and Treatment, Subchapter J, THSteps Medical Case Management Services, §§33.501 - 33.506, under a separate publication. The repeal is necessary in order to combine these sections in new Chapter 27, Case Management for Children and Pregnant Women. Specifically, these sections cover definitions; eligible recipients; THSteps Medical Case Management services; service limitations; applicant and provider qualifications, and application, review and monitoring processes.

The department also adopts new Chapter 27, Case Management for Children and Pregnant Women, §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13 and 27.15, under a separate publication. The new sections combine case management programs to meet the needs of pregnant women of all ages and children with a health condition/health risk, birth to 21 years. Specifically, these new sections cover definitions; eligible recipients; case management service provisions; service limitations; applicant

and provider qualifications; and application, review and monitoring processes.

The adopted new rules for Case Management for Children and Pregnant Women will provide case management services to Medicaid eligible women of all ages who have a high risk pregnancy and to children from birth to 21 years of age with a health condition/health risk. Two programs, Medicaid Case Management for High Risk Pregnant Women and High Risk Infants and the Texas Health Steps Medical Case Management were combined into one program in the new Chapter 27 upon the repeal of §§32.301 - 32.305, 32.307, 33.501 - 33.506, and 37.81 - 37.86. The new program will provide a greater continuity of services for all eligible recipients.

The repeals are adopted under the Health and Safety Code, §12.001, which provides the Board of Health (board) with the authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; the Health and Safety Code, Chapter 32, which provides the board with the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; the Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and the Government Code, §531.021, which provides the Health and Human Services Commission (HHSC) with the authority to propose rules to administer the state's medical assistance program, and are submitted by the Texas Department of Health under its agreement with HHSC to operate the EPSDT program, and as authorized under §1.07 of the Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 181. VITAL STATISTICS

The Texas Department of Health (department) adopts amendments to §§181.1-181.11, 181.13 - 181.14, 181.21, 181.23 - 181.26, 181.28 - 181.32, and 181.41 - 181.47; repeal of §§181.22, 181.27, 181.48 - 181.49; and new §§181.22 and 181.27, concerning administrative procedures, issuance of vital records events and statistical information, and the Central Adoption Registry of the Bureau of Vital Statistics. Sections 181.1, 181.26, and 181.44 are adopted with changes to the proposed text as published in the January 31, 2003, issue of the *Texas Register* (28 TexReg 889). The amendments to §181.2 - 181.11, 181.13 - 181.14, 181.21, 181.23 - 181.25, 181.28 -181.32, 181.41 - 181.43, 181.45 - 181.47, repeal of §§181.22, 181.27, and 181.48 -181.49, and new §§181.22 and 181.27 are adopted without changes and will not be republished.

Specifically, the amendments cover the following: Subchapter A clarifies key vital statistics words and terms; provides instructions and requirements for the preservation, transportation, and final disposition of dead bodies; set requirements regarding access, confidentiality and filing of supplemental birth certificates, fetal death certificates, and requests for personal data; and defines the form and content of birth, death, and fetal death certificates. Subchapter B provides instructions, sets requirements, and fees for issuance of certified copies, and registration of birth and death records; defines who can prescribe the form and context of the marriage application form; sets minimum requirements for adoption reporting and index access; and establishes notification, maintenance, and preservation requirements for out-of-business child-placing agencies' records. Subchapter C establishes rules for notifying adoptive parents about the Central/Voluntary Adoption Registry; defines the duties, responsibilities and fees associated with the voluntary adoption registries; and provides guidelines pertaining to the confidentiality, notification and the release of information. The repeals cover Confidentiality of Records Maintained by Each Registry and Fee Requirement for the Central Adoption Registry. The new sections cover Fees Charged for Vital Records Services and Memorandum of Understanding with the Texas Funeral Service Commission.

The Government Code, §2001.039, requires state agencies to review and consider for readoption each rule adopted by that agency, pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Sections §§181.1 - 181.11, 181.13 - 181.14, 181.21 - 181.32 and 181.41 - 181.49 have been reviewed, and the department has determined that the rules should continue to exist; however, changes were necessary.

A Notice of Intention to Review for §§181.1 - 181.11, 181.13 - 181.14; 181.21 - 181.32; and 181.41 - 181.49 was published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11528). No comments were received as a result of the publication of this notice.

The following comments were received concerning the proposed rules. Following each comment is the department's response and any resulting changes.

Comment: Concerning §181.1(5), the definition of "certified copy," a commenter stated that the phrase "seal of the State of Texas" should be changed to "state seal." The term "state seal" is used by the legislature, the secretary of state, and to the best of the commenter's knowledge, all other state agencies. If the bureau wishes to be specific about the precise design of the state seal, then the commenter suggested a reference to Title I, Texas Administrative Code, §72.50(1), which is the standard design for the state seal.

Response: The department agrees with the commenter, and has corrected the wording in this paragraph.

Comment: Concerning §181.7(a), (b), and (2), a commenter stated that when a stillbirth or fetal death occurs at the gestation of 20 completed weeks or more, the certificate filed should continue to be referred to as a Certificate of Stillbirth. Furthermore, Texas should consider giving the mother of a stillborn baby a "Certificate of Birth Resulting in Stillbirth."

Response: After consulting with the department's Office of General Council, it was determined that no changes be made as a result of the comment based on the following reasons: There was no live birth, hence no birth certificate should be issued;

and issuing a certificate of stillbirth would still require a certificate of fetal death to be issued for the same event.

The comments received were neither for nor against the rules in their entirety; however, the commenters were individuals and raised questions and offered suggestions for changes.

The department has made the following editorial changes due to staff comments to correct punctuation.

Change: Concerning §181.26(d)(5), a semicolon was added after the word "card".

Change: Concerning §181.44(a), a comma was added after the word "(CAR)".

SUBCHAPTER A. MISCELLANEOUS PROVISIONS

25 TAC §§181.1 - 181.11, 181.13, 181.14

The amendments are adopted under authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, department and the Commissioner of Health. The review of these rules implements Government Code, §2001.039.

§181.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A person who requests a service pertaining to a record of birth or death, verification of marriage or divorce, or release of personal data. (Also, see definition for properly qualified applicant).

(2) Birth records--Records governing births filed pursuant to the Texas Vital Statistics Act, the Health and Safety Code, Title 3.

(3) Bureau of Vital Statistics (Bureau)--The office within the Texas Department of Health charged with the implementation of the Texas Vital Statistics Act.

(4) Certification--A certified statement, form, or letter, of the facts stated on the form or document as filed in the Bureau of Vital Statistics, certified by the state registrar or duly appointed designee, over the respective signature and may bear the seal of the Bureau of Vital Statistics.

(5) Certified copy--An abstract or photocopy of the original record issued as filed with the Bureau of Vital Statistics, and issued on a designated form or security paper which shall bear the "state seal", the Texas Department of Health-Bureau of Vital Statistics or the seal of their office, and the facsimile signature of the State Registrar or the local registration official.

(6) Dead body--A lifeless human body or such parts of the human body or the bones thereof from the state of which it may be reasonably concluded that death occurred.

(7) Disinterment--To exhume, unbury, or take out of the grave.

(8) Death records--Records governing deaths and fetal deaths filed pursuant to the Texas Vital Statistics Act.

(9) Department--The Texas Department of Health.

(10) Embalming--The act of disinfecting or preserving a human dead body, entire or in part, by the use of chemical substances, fluids, or gases in the body; or by the introduction of the same into the body by vascular or hypodermic injection; or by direct application into the organs or cavities; or by any other method intended to disinfect or preserve a dead body or restore body tissues and structures.

(11) Fetal death (stillbirth)--Death prior to the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such separation, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(12) Genealogist--An individual who traces the descent of persons or families. He or she may be an individual family member or a person hired by the family to trace a family tree or do family research.

(13) Identification of applicant--Each applicant must present a current form of government issued photo identification along with his or her application. If the applicant is unable to present a current form of photo identification, two valid supporting forms of identification may be presented, one of which bears the applicant's signature.

(14) Immediate family member--The registrant, a member of his or her immediate family either by blood, marriage or adoption, his or her guardian, or his or her legal agent or representative.

(15) Indexes--An index to or listing of birth records, death records, applications for marriage licenses, and reports of divorce or annulment of marriage.

(A) Consolidated indexes--These indexes are vital records consisting of more than one event year. Consolidated indexes may be prepared for any vital event at the discretion of the State Registrar in the form prescribed.

(B) General birth and death indexes--These indexes are maintained or established by the bureau of vital statistics or a local registration official which shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials, the date of the event, the county of occurrence, the state or local file number, the name of the father, the maiden name of the mother, and sex of the registrant.

(C) Summary birth and death index--These indexes are maintained or established by the Bureau of Vital Statistics or a local registration official which shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials, the date of the event, the county of occurrence, and sex of the registrant.

(16) Interment--Burial or the act of placing in a grave.

(17) Legal representative (personal representative or agent)--An attorney in fact, a funeral director, or any other person designated by affidavit, contract, or court order acting on behalf and for the benefit of the registrant or his or her immediate family. In order to determine the need for protection for personal property rights when the legal representative is acting on behalf and for the benefit of the registrant or the registrant's immediate family or other entity having a direct and tangible interest in the record, the state registrar, local registrar, or county clerk shall require a designation document or an attested statement to that effect.

(18) Live birth--The complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the

umbilical cord has been cut or the placenta is attached; each product of such a birth is considered live born.

(19) Local registration official--A county clerk or person authorized by the Vital Statistics Act to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

(20) Non-institutional Birth--A birth occurring outside a hospital or birthing center licensed by the Texas Department of Health.

(21) Person in charge of interment--Any person who places or causes to be placed a fetus, dead body or the ashes, after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes thereof.

(22) Properly qualified applicant (qualified applicant)--The registrant, or immediate family member either by blood, marriage or adoption, his or her guardian, or his or her legal agent or representative. Local, state and federal law enforcement or governmental agencies and other persons may be designated as properly qualified applicants by demonstrating a direct and tangible interest in the record when the information in the record is necessary to implement a statutory provision or to protect a personal legal property right. A properly qualified applicant may also be a person who has submitted an application for a request to release personal information and has been approved as outlined in §181.11 of this title (relating to Requests for Personal Data).

(23) Registrant--The individual named on the certificate of birth, death, or fetal death; application for marriage license; or report of divorce or annulment of marriage.

(24) Research copy--A plain paper noncertified reproduction of the complete original document or a portion of the original document.

(25) Search--The act of examining the files and/or indexes maintained by the Bureau of Vital Statistics for a specific record or information.

(26) Signature--The name of a person written with his or her own hand; or by an electronic process approved by the State Registrar.

(27) State Registrar--The Chief, Bureau of Vital Statistics, Texas Department of Health.

(28) Supplemental Birth Certificate--A new birth certificate prepared and filed by the Bureau, which is based upon a paternity determination, or adoption. This new birth certificate replaces the original certificate of birth.

(29) Birth Verification--A noncertified statement only of the registrant's name, date of birth, and place of birth as it appears on the birth index filed with the Bureau of Vital Statistics.

(30) Death Verification--A noncertified statement only of the registrant's name, date of death, and place of death as it appears on the death index filed with the Bureau of Vital Statistics.

(31) Fetal Death Verification--A noncertified statement only of the registrant's name, date of delivery, and place of delivery as it appears on the fetal death index filed with the Bureau of Vital Statistics.

(32) Marriage Verification--A noncertified statement only of the registrant's name, date of marriage, and place of marriage as it appears on the application for marriage license index filed with the Bureau of Vital Statistics.

(33) Report of Divorce or Annulment of Marriage Verification--A noncertified statement only of the registrant's name, date of divorce, and place of divorce as it appears on the report of divorce or annulment of marriage index as it appears on the birth index filed with the Bureau of Vital Statistics.

(34) Vital statistics--The registration, preparation, transcription, collection, compilation, distribution and preservation of data pertaining to births, adoptions, paternity determinations, deaths, fetal deaths, suits affecting parent child relationship, court of continuing jurisdiction, marital status, and such other data as deemed necessary by the department.

(35) Vital Statistics Act--The Health and Safety Code, Title 3.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. VITAL RECORDS

25 TAC §§181.21 - 181.32

The amendments and new rules are adopted under authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, department and the Commissioner of Health. The review of these rules implements Government Code, §2001.039.

§181.26. Filing of Birth Certificates for Infants Born Outside of a Licensed Institution.

(a) All certificates of birth shall be filed as required by the Health and Safety Code, §192.001.

(1) Births occurring in a licensed institution shall be filed as required by the Health and Safety Code, §192.003. Licensed institutions include hospitals and birthing centers licensed by the department.

(2) Births occurring outside licensed institutions shall be filed as described in this section.

(b) The signature on the certificate of the registered, certified, or documented health care provider shall serve as prima facie evidence of the essential elements of proof required in subsection (c) of this section. The local registrar may accept certificates by mail when the signature of the registered, certified, or documented health care provider is on file with that registrar's office.

(c) The essential elements to register a noninstitutional birth are:

(1) proof of pregnancy in the following order of preference:

(A) an affidavit from a licensed, registered, or certified health care provider who is qualified to determine pregnancy as part of the scope of his/her license or registration, or certification; or

(B) an affidavit from one person, other than the parents, having knowledge of the pregnancy/birth.

(2) that there was an infant born alive;

(3) proof of the mother's presence in the registration district on the date of the birth if the birth occurred outside the locale of the mother's primary place of residence. Such proof shall consist of an affidavit from a person having knowledge of the mother's presence in the registration district in which the birth occurred on the date of the birth. If the birth occurred in the mother's primary place of residence, proof shall be presented in the following order of preference:

(A) a utility, telephone, or other bill which includes the mother's name and address;

(B) a rent receipt or agreement which includes the mother's name and address, and the printed name, address, and signature of the mother's landlord;

(C) a driver's license, or state issued identification card, which includes the mother's current residence on the face of the license/card;

(D) an envelope addressed to the mother at her place of residence, and postmarked prior to the date of the birth; or

(E) an affidavit attesting to the mother's place of residence from a person, other than the father, who was either living with the mother at the time of the alleged birth, or has other knowledge of the mother's residency; and

(4) the infant's birth occurred on the date stated.

(d) A birth as described in subsection (c) of this section shall only be filed upon personal presentation of the following evidence by the individual responsible for the preparation and registering of the certificate. An identifying document, with photograph, shall be presented in the following order of preference:

(1) a passport or certificate of naturalization;

(2) a military service or military dependent identification card;

(3) a United States government identification card, or national identification card issued by another country;

(4) a current driver's license or other state identification card;

(5) an alien registration receipt card; or

(6) an employee or student identification card, with photograph.

(e) At the discretion of the local registrar, the requirements contained in this section may be supplemented with any additional requirements which may be needed to verify the circumstances of the birth. Such additional requirements may include, but are not limited to, one or more of the following:

(1) an unannounced visit to the mother's residence or the place of the alleged birth by a public health nurse, other health professional, registrar staff, or other person including city, county, state, or federal law enforcement officer, prior to registering the alleged birth. This paragraph does not permit nor give authority to enter these premises unless permission is obtained from the occupant at the time of the visit;

(2) multiple forms of identifying documents, with or without photographs, when the documents described in this section are unavailable;

(3) personal appearance of both parents, either together or separately; or

(4) personal appearance of the infant whose birth certificate the parents are attempting to file.

(f) If the required or supplemental evidence described in this section is not available and the registrar is otherwise unable to verify the circumstances of the birth, the birth may only be filed upon order of a court of competent jurisdiction.

(g) A certificate of birth concerning a child who is between one and four years of age may only be filed by the state registrar. The state registrar shall require the same proof and documentation as previously mentioned in this section and, in addition, an affidavit of the parents and the attendant, if any, as to why the certificate was not timely filed. If the proof and documentation are not available, the certificate may only be filed as prescribed by the Health and Safety Code, §192.027.

(h) Each local registrar shall notify the state registrar's office of any suspicious documents or records submitted or filed with his/her office.

(i) Blank birth certificate forms shall only be issued to licensed institutions, certified nurse midwives, documented midwives, and individuals by the local registrar or the state registrar in reasonable amounts. No blank birth certificate forms shall be distributed by mail to any one other than a registered, certified, or documented health care provider.

(j) Each local registrar shall maintain a record of the number of blank birth certificate forms and their control number issued to each individual. The local registrar shall submit a copy of this record to the state registrar on a monthly basis.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2003.

TRD-200303601
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 3, 2003
Proposal publication date: January 31, 2003
For further information, please call: (512) 458-7236

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25 TAC §181.22, §181.27

The repeals are adopted under authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, department and the Commissioner of Health. The review of these rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. CENTRAL ADOPTION REGISTRY

25 TAC §§181.41 - 181.47

The amendments are adopted under authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, department and the Commissioner of Health. The review of these rules implements Government Code, §2001.039.

§181.44. Inquiry through the Central Index.

(a) The bureau charges a fee of $5.00 to determine if a child-placing agency that operates its own registry was involved in a specified adoption. The person may send the inquiry, along with the appropriate fee and proof of age and identity to the Central Adoption Registry (CAR), P.O. Box 140123, Austin, Texas 78714-0123 or may inquire in person at the Bureau of Vital Statistics, 1100 West 49th Street, Austin, Texas.

(b) Proof of age and identity is a copy of the requestor's driver's license or other photo identification and a copy of the birth certificate, if the requestor's name has changed due to marriage. If the name has been legally changed through a court order, a certified copy of the order shall accompany the request.

(c) The department shall provide the child-placing agency's name, address, telephone number, and E-mail address, if appropriate, if that agency operates its own registry to which a person may apply. If the CAR finds inconclusive information to determine which agency handled the adoption, the person is entitled to apply only to the CAR.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
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25 TAC §181.48, §181.49

The repeals are adopted under authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, department and the Commissioner of Health. The review of these rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 229. FOOD AND DRUG

The Texas Department of Health (department) adopts amendments to §§229.81, 229.82, 229.84, 229.85, 229.87 - 229.91, the repeal of §§229.83 and 229.86, and new §§229.83 and 229.86, concerning the production, processing, and distribution of bottled and vended drinking water. The amended §§229.81, 229.85 and 229.88, and new §229.86 are adopted with changes to the proposed text as published in the January 31, 2003, issue of the *Texas Register* (28 TexReg 901). Repeals §§229.83 and 229.86, amendments §§229.82, 229.84, 229.87, and 229.89 - 229.91, and new §229.83 are adopted without changes, and will not be republished.

An amendment to §229.81 adds definitions for clarification of the regulation. Duplicative language was deleted in §229.82. New §229.83 inserts the reference to the Texas Commission on Environmental Quality regulations on water hauling. An amendment to §229.84 updates the section title name. An amendment to §229.85 updates examples for labeling and advertising. New §229.86 reorganizes the section for clarity and adds a requirement for submission of sample results to the department. An amendment to §229.87 updates the reference to the Texas Commission on Environmental Quality. An amendment to §229.88 clarifies oversight of bottling and vending operations by a certified individual. An amendment to §229.89 adds a timeline for completing the bottled and vended water certificate examination within a limited time frame. An amendment to §229.90 updates the section title for clarification. Amendments to §229.91 update references to the department's hearing procedures and correct spellings to be consistent within the regulation.

Government Code, §2001.039, requires each state agency to review and consider for readoption each rule adopted by that agency. The current rules have been reviewed and the department has determined that reasons for adopting the sections continue to exist; however the rules need revisions as described in the preamble. Sections 229.83 and 229.86 are repealed, and new sections are adopted.

The department published a Notice of Intention to Review for §§229.81 - 229.91 in the *Texas Register* on March 22, 2002, (27 TexReg 2265). No comments were received as a result of the publication of this notice. Over 300 stakeholders were subsequently notified by mail that these rules were under review. Comments were submitted as a result of this mailing and were taken into consideration when drafting the proposed rules.

The following comments were received by the department during the official comment period concerning the proposed sections. Following each comment is the department's response and any resulting change.

Comment: Concerning §229.81(c)(14)(B), several commenters stated that deleting the word "unit" in the definition of "vended water" changes the meaning to include all sorts of waters.

Response: The department disagrees with these comments. The department feels the terms "unit" and "servings" are redundant, therefore "unit" was deleted in the proposed rules. No change was made as a result of these comments.

Comment: Concerning Section §229.81(c)(16), several commenters stated that definition of "water dispensing device" expands bureaucracy and is too vague. One commenter added, "What is your purpose?"

Response: The department disagrees with these comments. This definition was only added to provide some clarity on requirements for vending machines and bottled water stores. Under the current rules, requirements for both vending machines and bottled water stores were combined in §229.86. This section can be confusing because some of the requirements only apply to vending machines, not the store facilities. Since not all the requirements applied to vended water stores, the term "water dispensing device" was created, and §229.86 was divided into §§229.86(a) and 229.86(b) to provide better differentiation on requirements between the two types of facilities. No additional regulatory requirements were added on bottled water stores or vending machines due to the addition of this definition. No change was made as a result of these comments.

Comment: Concerning §229.83, several commenters recommended the removal of the wording that places jurisdiction of water hauled for bottled water from the Texas Commission on Environmental Quality's (TCEQ) jurisdiction as the department has sole jurisdiction over the production of food products including bottled water. The commenters also asserted that bulk hauled water is not drinking water and that deletion of this rule will not adversely impact health or safety.

Response: The department disagrees with these comments. The TCEQ regulates drinking water from its source to the point of the plant or dispensing device. As all water used in bottled and vended water must be from an approved source, the water at the point of source must be treated and therefore already meets the TCEQ's requirements for drinking water. While it is true that the department regulates food and beverages and their ingredients from the point of production through to the consumer, there is already a TCEQ regulation in place for hauling drinking water. The department feels there is no reason to create an additional or conflicting regulation. This department rule complements and does not conflict with the TCEQ rules. The deletion of this wording would remove any regulation of the tankers transporting water destined for bottled and vended water facilities. The department feels this could cause confusion and would have an impact on health and safety. The department does agree that there is confusion on the definition of "drinking water." A definition of "drinking water" has been added in §229.81(c)(6).

Comment: Concerning §229.83, several commenters stated that microbiological standards stated in §229.84 allow for flexibility on disinfection methods for transport. These commenters also stated that §229.83 is in direct conflict with federal regulations governing disinfection byproducts in bottled water and deletion would remove the requirement to test for disinfection byproducts in the source water.

Response: The department disagrees with these comments. Section 229.84 states, "Bottled and vended water production including transporting... shall be conducted under such conditions and controls as are necessary to minimize the potential for microbiological contamination... These conditions and controls shall include the following. (1) bottled and vended water shall be subject to effective germicidal treatment...". The commenters are requesting the removal of the treatment for the hauling of the water prior to plant production. Section 229.84 does allow for flexibility; however, this flexibility does not allow for no treatment and, as stated in the comment, would conflict with rules already in place for the transportation of drinking water. TCEQ regulation 30 TAC §290.42(b)(1) already requires disinfection of water at the source in order to obtain source approval. The reference to TCEQ water hauling regulations ensures disinfection residual through transportation. As the disinfection begins at the source, the requirement for testing disinfection byproducts of source water would not be eliminated by removing this section. There are methods during the processing of bottled and vended water to reduce the chlorine to an acceptable level in the finished product. Therefore, this rule is not in direct conflict with federal regulations. No changes were made as a result of these comments.

Comment: Concerning §229.84(2) and (3), several commenters recommended a change to this section allowing water to be filled in lines used for other beverages. The comments include the addition of a requirement for a Clean in Place (CIP) system or the equivalent to sanitize the lines prior to use for bottled water. The commenters assert with this change that firms prepare and follow a Hazard Analysis Critical Control Point Plan (HACCP).

Response: The department disagrees with these comments. The current rules do not require HACCP for bottled water facilities. To require such a system to be put in place at this time would require extensive start-up and training expenses for bottled water facilities. Since the requirement for dedicated lines has been the regulation in Texas for the past 15 years, industry in Texas is in general compliance at this time. No changes were made as a result of these comments.

Comment: Concerning §229.85(b), a commenter stated, "It should be specified that this subsection (b) applies to bottled water only since vending machine owners do not necessarily have control over the bottles being provided for use at the machine."

Response: The department disagrees with this comment. Labeling is only required for food in packaged form. Since vending machines do not sell water already in packaged form, there is no requirement for labeling, therefore this section does not apply. No change was made as a result of this comment.

Comment: Concerning §229.85(b), several commenters request the deletion of the source labeling requirement. These commenters assert this is in violation of the Federal Food, Drug and Cosmetic Act (FFDCA) 403A, and the Commerce Clause of the U.S Constitution and, as such, is preempted.

Response: The department disagrees with these comments. Federal preemption requirements described in FFDCA 403A do not apply to geographic source labeling. Section 403(A)(1) of the FFDCA preempts the states and locals on the name of the food if it has a "standard of identity." FFDCA 403(A)(1) only preempts the names of these waters and what they stand for. That is what a "standard of identity" means. As long as the "standards

of identity" for the various types of waters are in conformance (i.e. "Deionized Water," "Distilled Water," "Purified Water," etc.), states are permitted to have other types of labeling requirements for these waters, including source labeling. Requiring manufacturers to label the source of the product has nothing to do with a "standard of identity." The Commerce Clause of the U.S. Constitution does not apply in the matter of source labeling. Source labeling is required only for manufacturers of bottled water in the State of Texas. Manufacturers of bottled water in other states do not have to comply with these requirements. No change was made as a result of these comments.

Comment: Concerning §229.86(b)(3), two commenters did not agree that vending machines should be equipped with self-closing, tight-fitting doors. A commenter understood why this could be required for outdoor machines, but not for the machines kept indoors. The commenter suggested that a sneeze guard should be adequate indoors. Another commenter stated that machines with dispensing nozzles that are inaccessible when the machine in not dispensing water should be allowed.

Response: The department partially agrees with these comments. First, the purpose of this section of the regulation is to protect the dispenser from environmental contamination. Even if a vending machine is placed indoors, it may be in an area with high traffic or where it is exposed to handling or cross drafts. Therefore, the department believes the reason for the protective door requirement remains. The department does not believe a sneeze guard meets this requirement. Second, the department considers vending machines that have a design such that the dispensing nozzle is protected by a mechanism that isolates the dispenser by an internal door when not in use, to be in compliance with this portion of the regulation. No change was made as result of these comments.

Comment: Concerning §229.86(c)(2), a commenter recommended that if the water used in the vending machine is from an approved source per state and local government agencies, why should the language, "...and if required by the department, shall also be analyzed for other physical, chemical, or microbiological parameters..." be added.

Response: The department disagrees with this comment. The department recognizes that approved sources are required to maintain certain physical, chemical, or microbiological test results. The department includes this language in the regulation to allow the department to do testing in cases where water from a particular facility is believed to be contaminated. In the case of vended water, this language does not require any additional routine testing other than the monthly bacteriology testing. No change was made as a result of this comment.

Comment: Concerning §229.86(c)(2)(A), a commenter recommended that the "testing lab or agency should be responsible for reporting POSITIVE TEST results to Austin rather than the vendor."

Response: The department disagrees with this comment. The vendor is responsible for testing the water and ensuring it is safe to distribute to the public. The department feels it is the vendor's responsibility to notify the department if water from their facility tests positive. In addition, the department does not have statutory authority to require private laboratories to submit sample results. No change was made as result of this comment.

Comment: Concerning §229.86(c)(2)(A), a commenter suggested that positive tests results be e-mailed in place of faxing.

Response: The department agrees with this comment. An option for e-mailing the positive test results has been added to this section.

Comment: Concerning §229.86(c)(2)(B), several commenters requested deletion of this section.

Response: The department disagrees with these comments. The department was approached during the rulemaking process to reduce the sampling interval on water dispensing devices. The department does not have enough data to determine the public health impact of this request. This section was added with the intent of requiring vendors to submit all sample results for the period of one year from the date of the rule implementation to obtain the needed data. After one year, the requirement to submit negative sample results to the department will be removed. No change was made as a result of these comments.

Comment: Concerning §229.86(c)(2)(B), a commenter suggests that a single, complete file of results be e-mailed within five business days of the end of each month.

Response: The department agrees with this comment. The section has been changed to allow negative sample results for one month to be sent in bulk within ten calendar days of the last day of the month. In addition, an option was added for e-mailing the test results.

Comment: Concerning §229.86(c)(5)(A), a commenter suggested that if the water sample is positive for coliforms, the machine should be disinfected and then a second sample taken. Also, the commenter recommended changing the verbiage "...one sample per day during a four consecutive-day period..." to three days later after disinfecting based on the assumption that the vending machine is using a reverse osmosis membrane in the purifying process. If the water is not processed by reverse osmosis, then the original rule would apply. The commenter stated, "Where can E-coli come from in these machines?" Another commenter recommended a single retest within 24 hours of notification of a positive coliform, without shutting the machine down. Should the retest be positive, the machine must be shut down, the "entire" machine sanitized, then a sample of the vended water and the source water be submitted. Both samples must be coliform negative in order to allow the machine to return to operation. Another commenter stated, "The four consecutive-day requirement is difficult to achieve without significant and unnecessary down time. For example, if we are notified of a positive sample on a Wednesday, in order to meet the four consecutive-day requirement, we would have to wait to begin repeat sampling until the following Monday." The commenter suggested that the repeat sampling should be completed on the same day.

Response: The department agrees with these comments. Regarding §229.86(c)(5)(A) - (C), subparagraphs (A) and (B) were amended, and subparagraph (C) was added to reflect the wording recommended by the Association of Food and Drug Officials model regulation for vended water.

Comment: Concerning §229.86(c)(5)(B), one commenter suggested eliminating this section or changing it to state, "GO GET ANOTHER SAMPLE as long as it is in the time frame required, i.e. monthly." Another commenter recommended deleting this section. The commenter stated, "A repeat test from water vending machines that have initially tested positive for coliform bacteria is an appropriate monitor of sample collection techniques."

Response: The department agrees with these comments. Regarding §229.86(c)(5)(A) - (C), subparagraphs (A) and (B) were amended, and subparagraph (C) was added to reflect the wording recommended by the Association of Food and Drug Officials model regulation for vended water.

Comment: Concerning §229.86(c)(2), several comments were received regarding bacteriological sampling of each water dispensing device. The commenters stated that this is very costly, and if the source of the water is the same for each dispensing device, why have to test each device?

Response: The department agrees with these comments in that the wording in the definition for a water dispensing device is not clear. The definition has been changed in §229.81(c)(17) to specify a water dispensing device as each unit that filters and disinfects the water for dispensing. The department did not intend for the definition to include each faucet in the case of a vended water store. However, each vending machine is a separate water dispensing device.

Comment: Concerning §229.88(a) and (b), a commenter recommended clarifying this section. The commenter stated that "§229.88(a) seems to require a vended water operator to hold a certificate...; however, (b) appears to allow an operator to run a system as long as he/she is being guided by someone who holds a certificate..."

Response: The department disagrees with this comment. The rule actually states the opposite. Section 229.88(a) requires that a bottled water facility have full-time supervision by a certified bottled water operator. The record keeping and sampling requirement for bottled water are more involved than vending. Section 229.88(b) requires that vending operations have a certified bottled and vended water operator guide the operation and be available whenever there are problems. No change was made as a result of this comment.

Comment: Concerning §§229.88 - 229.89, several commenters requested the expansion of this section to include acceptance of the International Bottled Water Association's (IBWA) Certified Plant Operator Program. The commenters also requested that the department standardize its program to follow the IBWA's certifying program.

Response: The department disagrees with these comments. The Texas Health and Safety Code, Chapter 441, Regulation of Bottled and Vended Drinking Water requires the department to provide for the testing of the applicant and issue a certificate of competency. It does not give the department the authority to allow for third party testing or reciprocity of third party certifications. No change was made as a result of these comments.

Comment: Concerning §§229.88 - 229.89, a commenter requested a change in the section to include two separate tests, one for water vending operators and a second for bottled water operators.

Response: The department disagrees with the comment at this time. However, we are studying the issue for future consideration. No change was made as a result of this comment.

Comment: Concerning the legend for the proposed rules, one commenter stated, "A new legend hidden in the text before paragraph §229.83 is a violation of order, common sense, standard procedure, and usual purpose. Why publish proposed changes if they are going to be camouflaged?"

Response: The department disagrees with this comment. A department copy of the proposed rules was forwarded to the commenter which included a legend to determine the underlining of new rule text, brackets for rule text being deleted, and (No change.) for rule text not being changed. The legend is department format which is almost identical to the *Texas Register's* weekly publication of rules that explains and utilizes the underlining, brackets, and (No change.) language at the beginning of proposed rules. No change was made as a result of this comment.

The commenters were: Culligan Store Solutions, Danone Waters of North America, Glacier Water, International Bottled Water Association, National Automatic Merchandising Association. In addition, numerous individuals commented. All commenters were not against the rules in their entirety, however, expressed concerns, asked questions, and suggested recommendations for change as discussed in the summary of comments.

The department is making the following changes due to staff comments.

Change: Concerning §229.88, a period was added at the end of the first sentence of the rule text.

Change: Concerning §229.85(b), a statement was added to clarify that water processed by deionization, distillation, or reverse osmosis that renders the water "purified" as defined by §229.81(c)(11) are not required to declare the source of the water.

SUBCHAPTER F. PRODUCTION, PROCESSING, AND DISTRIBUTION OF BOTTLED AND VENDED DRINKING WATER USE

25 TAC §§229.81 - 229.91

The amendments and new rules are adopted under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, department, and the commissioner of health. The review of these rules implements Government Code, §2001.039.

§229.81. General Provisions.

(a) Purpose. These sections establish definitions and standards for the processing and bottling of drinking and vended water. The sections also will supplement §§229.181-229.184 of this title (relating to Licensure of Manufacturers of Food and Wholesale Distributors of Food - Including Good Manufacturing Practices) and federal regulations in Title 21, Code of Federal Regulations, Part 165 concerning standards of quality, and Part 129 concerning processing and bottling of bottled drinking water.

(b) Requirements for specific standardized beverages. The department adopts by reference Title 21 Code of Federal Regulations, §165.110 concerning the identity, nomenclature, other label statements and label declarations for both bottled and vended water, except as modified by the Texas Board of Health in §229.85(b) of this title (relating to Labeling and Advertising).

(c) Definitions. The following words and terms, when used in this chapter, shall pertain to both bottled and vended water and shall have the following meanings unless the context clearly indicates otherwise.

(1) Approved source (when used in reference to a plant's product water or operations water)--A source of water and the water therefrom, whether it be from a spring, artesian well, drilled well, municipal water supply, or any other source, that has been inspected and the water sampled, analyzed, and found to be of a safe and sanitary quality according to applicable laws and regulations of State and local government agencies having jurisdiction. The presence in the plant of current certificates or notifications of approval from the government agency or agencies having jurisdiction constitutes approval of the source and the water supply.

(2) Artesian water--Water from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer is "artesian water" or "artesian well water."

(3) Bottled water--Water that is intended for human consumption and that is sealed in bottled or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents.

(4) Department--Texas Department of Health.

(5) Distilled water--Water which has been produced by a process of distillation and meets the definition of purified water in the United States Pharmacopeia, 23rd revision, January 1, 1995, which the department adopts by reference. (Copies may be obtained from the United States Pharmacopial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852).

(6) Drinking water--All water from the point of the approved source intended for the purpose of human consumption or which may be used in the preparation of foods or beverages.

(7) Fluoridated water--Water containing added fluoride.

(8) Ground water--Water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure.

(9) Mineral water--Water containing not less than 250 parts per million (ppm) total dissolved solids (TDS), coming from a source tapped at one or more bore holes or springs, originating from a geologically or physically protected underground water source.

(10) Person--Includes individual, partnership, corporation, or association.

(11) Purified water--Water that has been produced by distillation, deionization, reverse osmosis, or other suitable processes and that meets the definition of "purified water" in the United States Pharmacopoeia, 23rd revision, January 1, 1995, which the department adopts by reference. (Copies may be obtained from the United States Pharmacopial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852).

(12) Sparkling bottled water--Water that after treatment and possible replacement of carbon dioxide, contains the same amount of carbon dioxide that it had at emergence from the source.

(13) Spring water--Water derived from an underground formation from which water flows naturally to the surface of the earth.

(14) Sterile water or sterilized water--Water that meets requirements under "Sterility Tests" in the United States Pharmacopeia, 23rd revision, January 1, 1995, which the department adopts by reference. (Copies may be obtained from the United States Pharmacopial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852).

(15) Vended water--Vended water is:

(A) water dispensed from any vending machine; or

(B) servings of water dispensed in bulk by any operator or consumer from any water dispensing device.

(16) Vending machine--Any self-service device which upon insertion of a coin, coins, or token, or upon receipt of payment by other means, dispenses servings of water in bulk, without the necessity of refilling the machine between each operation.

(17) Water dispensing device--Any water unit that dispenses water in bulk without the necessity of refilling the machine between operations. This term includes stores that are manned by an operator at all times in which consumers bring containers to be filled by the operator, facilities that are not manned by an operator and where consumers dispense their own water, and vending machines. A water dispensing device may have several dispensing faucets in the case of a store. However, each vending machine is considered a separate water dispensing device.

(18) Well water--Water taken from a hole bored, drilled, or otherwise constructed in the ground which taps the water of an aquifer.

(d) Other requirements for specific standardized beverages.

(1) Artesian water may be collected with the assistance of external force to enhance the natural underground pressure. On request, a bottler or vendor shall demonstrate to the department that the water level stands at some height above the top of the aquifer.

(2) For bottled water or drinking water, fluoride may be optionally added within the limitations established in 21 Code of Federal Regulations (CFR) Part 165.110(b)(4)(ii). Bottled water may be used as an ingredient in beverages (e.g., diluted juices, flavored bottled waters). It does not include those food ingredients that are declared in ingredient labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," "sparkling water," and "tonic water." The processing and bottling of bottled water shall comply with applicable regulations in 21 CFR, Part 129.

(3) For fluoridated water, the total fluoride content levels cannot exceed levels contained in 21 CFR 165.110(b)(4)(ii).

(4) Ground water must not be under the direct influence of surface water as defined in 40 CFR 141.2.

(5) Mineral water shall be distinguished from other types of water by its constant level and relative proportions of minerals and trace elements at the point of emergence from the source, due account being taken of the cycles of natural fluctuations. No minerals may be added to this water.

(6) Water processed by demineralization that meets the purified water definition may alternatively be called "demineralized water." Alternatively, water that has been processed by deionization may be called "deionized water," and water processed by distillation may be called "distilled water," and water that has been processed by reverse osmosis may be called "reverse osmosis water." Also, if the water has been processed by either of the previously listed methods the water may be called "(blank) drinking water," with the blank being filled in with one of the defined terms describing the method of processing.

(7) Spring water shall be collected only at the spring or through a bore hole tapping the underground formation feeding the spring. There shall be a natural force causing the water to flow to the surface through a natural orifice. The location of the spring shall be identified. Spring water collected with the use of an external force shall be from the same underground stratum as the spring, as shown be a measurable hydraulic connection using a hydrogeologically valid method between the bore hole and the natural spring, and shall have all the physical properties, before treatment, and be of the same composition and quality, as the water that flows naturally to the surface of the

earth. If spring water is collected with the use of an external force, water must continue to flow naturally to the surface of the earth through the spring's natural orifice.

§229.85. Labeling and Advertising.

(a) Claims of medicinal and health-giving properties shall not be placed on labels and references shall not be made to bacterial purity or to laboratory examinations which may have been made by department laboratories.

(b) The label must state the source of all artesian water, spring water, mineral water, well water, or drinking water sold. Source refers to the point of origin. Examples: Singing Hollow Spring Water from Buck Hollow, Arkansas; drinking water obtained from Austin municipal water supply, Austin, Texas; well water from Bandera, Texas. Except that water processed by distillation, deionization, reverse osmosis, or other suitable process that alters the water's physical properties enabling it to meet the definition of purified as defined in §229.81(c)(11) of this title (relating to General Provisions) is not required to state the source. This exception only applies if all the water used in the finished product is processed to meet the definition of purified.

(c) Other label statements.

(1) If the Total Dissolved Solids (TDS) content of Mineral water is below 500 ppm, or if it is greater than 1,500 ppm, the statement "low mineral content" or the statement "high mineral content," respectively, shall appear on the principal display panel following the statement of identity in type size at least one-half the size of the statement of identity but in no case less that one-sixteenth of an inch. If the TDS of mineral water is between 500 and 1,500 ppm, no additional statement need appear.

(2) When the label or labeling of a bottled water product states or implies (e.g., through label statements or vignettes with reference to infants) that the bottled water is for use in feeding infants, and the product is not commercially sterile, the product label shall bear conspicuously and on the principal display panel the statement "Not sterile. Use as directed by physician or by labeling directions for use of infant formula."

§229.86. Processing of Vended Water.

(a) Water dispensing device requirements are as follows.

(1) Any device from which any operator or consumer dispenses servings of water in bulk shall comply with Title 21, Code of Federal Regulations (CFR), §129.40, Equipment and Procedures, and §165.110, Requirements for Specific Standardized Beverages. Except §129.40, the provision pertaining to the cleaning, sanitizing, filling, and capping or sealing of containers shall not apply to containers furnished by the consumer.

(2) Water dispensing devices shall:

(A) be designed and constructed to permit thorough cleaning, sanitization, and maintenance of all exterior and interior surfaces and component parts;

(B) have all parts and surfaces that come into contact with the water constructed of corrosion-resistant, and nonabsorbent material acceptable to the department and capable of withstanding repeated cleaning and sanitizing treatment;

(C) be designed so all treatment of the water by distillation, ion-exchange, filtration, ultraviolet light, reverse osmosis, mineral addition, or any other acceptable process is done in an effective manner;

(D) have an effective system of collection and handling of drip, spillage, and overflow of water;

(E) have a backflow prevention device approved by the department or local authority for all connections with the water supply;

(F) disinfect water by ultraviolet light or other method approved by the department immediately prior to delivery into the customer's container;

(G) comply with the American Water Works Association (AWWA) specifications for granular activated carbon if used in the treatment of potable water (AWWA B604-74);

(H) be maintained in a clean and sanitary condition; and

(I) be free from dirt and vermin.

(b) Vending machines, in addition to requirements in subsection (a) of this section, shall:

(1) have a recessed or guarded corrosion-resistant dispensing spout;

(2) be equipped with monitoring devices designed to shut down operation of the machine when the disinfection unit fails to function;

(3) be equipped with a self-closing, tight-fitting door on the vending compartment;

(4) be located in an area that can be maintained in clean condition and in a manner that avoids insect and rodent harborage; and

(5) display in a position clearly visible to customers, the following information:

(A) the name and address of the operator;

(B) a statement to the effect that the water is obtained from an approved source; and

(C) a local or toll-free telephone number that may be called for further information, service, or complaints.

(c) Service, sampling and records shall meet the following requirements.

(1) All parts and surfaces of the water dispensing device shall be maintained in clean condition by the vended water operator. The dispensing chamber and dispensing nozzle shall be cleaned and sanitized each time the device is serviced; whereas, all surfaces in contact with the vended water shall be maintained as a deposit free, visibly clean system. A record of cleaning and maintenance operations shall be kept by the operator for each water dispensing device for a period of two years and be available for inspection upon request.

(2) The vended water from each water dispensing device shall have a bacteriological analysis conducted a minimum of once every month and if required by the department, shall also be analyzed for other physical, chemical, or microbiological parameters.

(A) Sample results reported as coliform positive or unsuitable for analysis shall be submitted by facsimile to the department within 24 hours of receipt of the sample results from a laboratory acceptable to the department. The person shall submit the results to the Manufactured Foods Division by facsimile at (512) 719-0263, or by e-mail at Feedback.MFD@tdh.state.tx.us.

(B) Sample results reported as coliform negative shall be submitted to the department within ten calendar days of the last day of each month in which the sample(s) were taken. The person shall send the results to the department via mail to the following address: Manufactured Foods Division, Bottled and Vended Water Program, 1100 West 49th Street, Austin, Texas 78756, or via e-mail to Feedback.MFD@tdh.state.tx.us.

(C) The person operating a water dispensing device shall maintain the original of all sample results for a period of two years. The analyses shall be performed by a laboratory acceptable to the department to perform drinking water analyses, and a copy of the analysis shall be available for review and copying during inspections.

(3) Each person operating a water dispensing device shall maintain a written maintenance program. The written maintenance program shall include written servicing instructions for the operator; technical manuals for the machine and water treatment appurtenances involved; and records of service. The written maintenance program shall be available for inspection by the department.

(4) The vended water operator shall clean and perform servicing of the water vending machine a minimum of once per month.

(A) More frequent cleaning and servicing may be required to maintain sanitation or as required by the manufacturer of the equipment.

(B) Sampling results of positive coliform or unsuitable for analysis are indications that servicing of machine may be required at a higher frequency than once per month as detailed in paragraph (5) of this subsection.

(5) Methods of testing for maximum contaminant levels (MCLs) for microbiological contaminants in water dispensed from water dispensing devices shall be performed as follows:

(A) if any sample collected from a water dispensing device is determined to be unsatisfactory for any reason (i.e. coliform positive or unsuitable for analysis), the operator shall notify the department in accordance with paragraph (2)(A) of this subsection; and

(B) the water dispensing device shall be cleaned, sanitized and resampled immediately. Until the sample results are known the machine shall remain out of service; and

(C) if after being cleaned and sanitized, the vended water is determined to be unsatisfactory, the machine shall remain out of service until the source of the contamination has been located and corrected and a negative sample obtained. The negative sample result shall be maintained in accordance with paragraph (2)(C) of this subsection.

§229.88. Certificates of Competency.

A person may not furnish bottled or vended water to the public or for distribution to the public unless the bottled or vended water operator holds a certificate of competency under this chapter.

(1) A person may not furnish bottled water to the public or for distribution to the public unless the processing, bottling, and distribution of the bottled water is performed by or under the full-time supervision of a bottled and vended water operator who holds a certificate of competency under this chapter.

(2) A person may not furnish vended water to the public or for distribution to the public unless the processing, bottling, and distribution of the vended water is performed by or under the guidance and control of a bottled and vended water operator who holds a certificate of competency under this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2003.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER F. PRODUCTION, PROCESSING, AND DISTRIBUTION OF BOTTLED AND VENDED DRINKING WATER

25 TAC §229.83, §229.86

The repeals are adopted under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, department, and the commissioner of health. The review of these rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 295. OCCUPATIONAL HEALTH

SUBCHAPTER A. HAZARD COMMUNICATION

25 TAC §§295.1 - 295.9, 295.11 - 295.13

The Texas Department of Health (department) adopts amendments to §§295.1-295.9 and 295.11-295.13, concerning the requirements for public employers (tax base-supported employers and agencies created by state law) to take actions to protect their employees from hazardous chemicals. Section 295.12 is adopted with changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2242). Sections 295.1-295.9, 295.11, and 295.13 are adopted without changes and, therefore, the sections will not be republished.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 295.1-295.9 and 295.11-295.13 have been reviewed and the department has determined that reasons for adopting the sections continue to exist.

A notice of intention to review rules was published for §§295.1-295.9 and 295.11-295.13 in the January 24, 2003, issue of the *Texas Register* (28 TexReg 761) for the state agency review of

rules in accordance with Government Code, §2001.039. No comments were received by the department on these sections.

The sections ensure that public employers will have access to new compliance assistance documents that have been developed by the department and more timely access to hazardous chemical information contained in material safety data sheets. In addition, the sections clarify responsibilities of employers under the Health and Safety Code, Chapter 502, and clarify how the department will enforce the Chapter.

The amendment to §295.1 eliminates an outdated effective date established in the previous rule. The amendments to §295.2 add one new definition, delete one definition, and amend five others to clarify the intent of the rules. The amendments to §295.3 reflect a change in the Division name and provide the program's toll free telephone number. The amendments to §295.4 clarify that a model workplace chemical form is now available to employers from the department. The amendment to §295.5 reduces the amount of time that a hazardous chemical manufacturer or distributor will have to provide a material safety data sheet (MSDS) to an employer after receipt of the employer's written request for this document. The amendments to §295.6 specify the federal citation for the standard that manufacturers and distributors of hazardous chemicals must meet in providing container labels and clarify that employers are responsible for re-labeling a hazardous chemical container when the label is missing. The amendments to §295.7 notify employers of the availability of a model written hazard communication program from the department and clarify that this model is a recommended format. The amendments to §295.8 clarify that an employer's refusal to allow an inspection is a violation of both the Health and Safety Code, Chapter 502, and the rules. The amendments to §295.9 reflect the change in the Division name. The amendments to §295.11 clarify that an employer's written response to the department's written notice of proposed administrative penalties must conform to at least one of the options listed in the written notice. The amendments to §295.11 also clarify that a hazardous chemical manufacturer's or distributor's failure to provide an MSDS within three business days of an employer's written request is an example of a severe violation of Chapter 502. The amendments to §295.12 notify employers of the availability of the department's electronic and Spanish versions of the workplace notice. The amendments to §295.13 clarify that nurses, as well as physicians, may obtain trade secret information for a hazardous chemical when that information is needed for medical treatment during an emergency.

No comments were received on the proposal during the comment period; however, the department is making the following minor change due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning §295.12(a), the wording of the workplace notice was inadvertently omitted in the proposed amendments. The department is providing an updated version of the workplace notice that provides the new program mailing address.

The amendments are adopted under the Health and Safety Code, §502.019, which provides the Texas Board of Health (board) with the authority to adopt necessary rules to administer and enforce Chapter 502; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. The review of these rules implements Government Code, §2001.039.

§295.12. Employee Notice; Rights of Employees.

(a) Employers covered by the Act must post and maintain workplace notices specified in this section. The wording of the required workplace notice may be changed by the commissioner as needed.
Figure: 25 TAC §295.12(a)

(b) The workplace notice shall measure at least 8-1/2 by 11 inches and be typed, typeset, or mechanically produced with lettering that is clearly legible. The letters shall not be smaller than 12 characters per inch. The words "NOTICE TO EMPLOYEES" shall be in bold capital letters at least 1/2 inch high. Other words spelled in capital letters in the sample notice shall be reproduced in capital letters.

(c) A current version of the workplace notice shall be clearly posted and unobstructed at all locations in the workplace where notices are normally posted, and at least one location in each workplace.

(d) An employer may add information to the workplace notice as long as the wording required by this section is included. Employers may add the name and telephone number of the employer's safety or environmental health officer to the bottom of the workplace notice in order to facilitate communication within the workplace.

(e) To assist employers in providing the workplace notice information, the department shall make original copies of the workplace notice available for photocopying by employers. The department shall also make an electronic version of the workplace notice available to employers. A Spanish translation of the workplace notice is available from the department.

(f) Employees have guaranteed rights to accessing the workplace chemical list and MSDSs and to receive training under the Act.

(g) Employees have a guaranteed right to receive appropriate personal protective equipment (PPE) from their employer. Employers shall provide appropriate PPE to employees who may be exposed to hazardous chemicals in their workplace. The employer shall provide training to employees regarding how to maintain and store PPE appropriately to ensure that contamination does not occur.

(h) An employee shall not be disciplined, harassed, or discriminated against by an employer for filing complaints, assisting inspectors of the department, participating in proceedings related to the Act, or exercising any rights under the Act.

(i) Employees cannot waive their rights under the Act. A request or requirement for such a waiver by an employer violates the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 16. TEXAS HEALTH CARE INFORMATION COUNCIL

CHAPTER 1301. HEALTH CARE INFORMATION

SUBCHAPTER A. COLLECTION AND RELEASE OF HOSPITAL DISCHARGE DATA

25 TAC §§1301.11, 1301.12, 1301.14 - 1301.19

The Texas Health Care Information Council (Council) adopts the review of §§1301.11-1301.20, pursuant to the Government Code, §2001.039, which is being published elsewhere in this issue of the *Texas Register*. The proposed review was published in the February 21, 2003 issue of the *Texas Register* (28 TexReg 1663). The Council also adopts amendments to §§1301.11, 1301.12, 1301.14, 1301.15, 1301.16, 1301.17, 1301.18, and 1301.19 as published in March 21, 2003 issue of the *Texas Register* (28 TexReg 2451) relating to the change in billing claim format as required by the Public Law 104-191, Health Insurance Portability and Accountability Act of 1996 (HIPAA), and providing access to more Public Use Data elements regarding external causes of injury, charges, service utilization, and to clarify language.

Sections 1301.11, 1301.12, 1301.14, 1301.15, 1301.16, 1301.17, and 1301.18, are adopted without changes to the proposed text published in the March 21, 2003, issue of the *Texas Register* (28 TexReg 2451) and will not be republished. Section 1301.19 is adopted with changes to the proposed text.

In §1301.19(c)(1) the proposed data segment for the race code has been modified, by removing the "-3" because it is not appropriate for the ANSI 837 Institutional Guide format translator used at Texas Health Information Network (THIN). The DMG05 segment will continue to be the location for the race code. Also the five-digit codes for race are withdrawn and the previous one-digit codes will be used.

In §1301.19(c)(2) the proposed five-digit ethnicity codes are withdrawn.

In §1301.19(e)(1-4 and 6-11) the word "in" and the proposed American National Standards Institute's Accredited Standards Committee X12N Form 837 Health Care Institutional Claims Guide (ANSI 837 Institutional Guide) data location language (Loop and Data segment) are removed.

In §1301.19(e)(5) the word "reported" replaces "placed in," and the proposed ANSI 837 Institutional Guide data location language (Loop and Data segment) is removed.

The Council received no comments relating to the rule review. The Council received comments from the Texas Hospital Association (THA) and the Dallas-Fort Worth Hospital Council (DFWHC) regarding the proposed amendments.

The agency's reason for adopting the rules contained in this chapter continues to exist.

TEXAS HOSPITAL ASSOCIATION'S AND DALLAS FORT WORTH HOSPITAL COUNCIL'S COMMENTS AND THE COUNCIL'S RESPONSES TO THE PROPOSED AMENDMENTS PUBLISHED IN THE MARCH 21, 2003 ISSUE OF THE TEXAS REGISTER (28 TexReg 2451).

PREAMBLE

Each commenter said the cost estimates in the preamble were substantially lower than hospitals reported they would expend to comply with Council rule requirements. The Council cost estimates are based on the anticipated additional costs to hospitals' billing systems. Some hospitals have indicated they would elect to create data extract systems rather than modify their billing systems. If they choose this option the costs will likely be significantly higher. The Council's estimates are based on the belief that all hospitals required to report are required to comply with HIPAA for billing claims, therefore the hospital must have a process to collect and submit claims from their internal system and it must be in the format of ANSI ASC X12N Form 837 Institutional Guide and then they must modify their systems to capture and submit Race and Ethnicity. The submission of additional E-codes in the ANSI Institutional Guide format only requires submitting the additional data elements with the proper qualifying code. Section §§2001.024 (a)(4)(A) and 2001.024 (a)(5)(B), Government Code requires that the fiscal note estimate additional costs associated with implementing the proposed amendments and the probable economic cost to persons required to comply with the rule. The fiscal note is not required to anticipate costs for providing optional features based on the amendments, such as building a separate data system to submit data to the Council.

§1301.19(a)

One commenter stated, "It needs to be clear in the documentation that THCIC will take the HIPAA 4010 with the additional Race/Ethnicity and E-Codes, and ignore additional data." The Council disagrees and believes that §§1301.19(a) and (c) clearly indicates the correct format and additional data elements and location of those elements to submit data to the Council.

The same commenter also made the following recommendation that "THCIC consider following the Federal Government and CMS timelines for changing file specifications. Language needs to be added to rules to reflect the timelines that THCIC would be following in regards to file specifications." The Council disagrees with the commenter in that following that recommendation would require the hospitals to be submitting in the THCIC compliant version of the ANSI 837 Institutional data format on October 16, 2003 and it is preferable for the Council to initiate changes on a calendar quarter basis so that data for the full year is in the same format.

§1301.19(c)(3)

One commenter stated and recommended the following statement; "E codes are not collected and reported in a standard format by hospitals, and likely to have data integrity issues for reporting quality and patient safety. We recommend that additional E codes not be included in the minimum dataset." The Council disagrees with the commenter's recommendation. E-codes are currently collected by hospitals and reported in standard formats. A review of the fourth quarter 2001 and first quarter 2002 Public Use Data Files showed that for each quarter more than 330 different reporting facilities submitted a total of more than 51,000 discharges with one or more E-codes. Therefore the Council believes that hospitals are collecting and reporting E-codes in a standard format. The Council cannot adequately address hospital inter-reliability of reporting.

§1301.19(e)

One commenter stated and recommended the following, "The rules are tightly tied to data specifications, we suggest either moving away from this language and listing the minimum data required to be in compliance". The Council agrees with the commenter and has removed the ANSI X12N Institutional Guide terminology loops and data segments and data elements and clarified the language regarding §1301.19(e).

Timeline for Transition

The Council received comments from both commenters regarding the transition timeline even though the Council did address the transition timeline from the UB92 to the ANSI 837 Institutional Guide in the proposed amendments.

The amendments are adopted under the Health and Safety Code, §§108.006 and 108.009. The Council interprets §108.006 as authorizing it to adopt rules necessary to carry out Chapter 108, including rules concerning data dissemination requirements. The Council interprets §108.009 as authorizing the Council to adopt rules regarding the collection of data from hospitals in uniform submission formats so incoming data will be substantially valid, consistent, compatible and manageable.

Health and Safety Code, §§108.006, 108.009, 108.011, 108.012, and 108.013 are affected by these amendments.

§1301.19. Discharge Reports--Records, Data Fields and Codes.

(a) Hospitals that have not obtained an exemption letter authorized by §1301.15 of this title (relating to Exemptions from Filing) shall submit discharge reports, electronically in the file format for inpatient hospital bills defined by the American National Standards Institute (ANSI), commonly known as the ANSI ASC X12N form 837 Health Care Claims (ANSI 837 Institutional Guide) transaction for institutional claims and/or encounters. ANSI updates this format from time to time by issuing new versions.

(b) The Council will make detailed specifications for these data elements available to submitters and to the public.

(c) In addition to the data elements contained in the ANSI 837 Institutional Guide, the Council has defined the following data elements shown in this subsection and as defined the location in the ANSI 837 Institutional Guide where each element is to be reported. Data element content, format and locations may change as federal and state legislative requirements change in regards to Public Law 104-191, Health Insurance Portability and Accountability Act of 1996 (HIPAA) is implemented.

(1) Patient race - This data element shall be reported at Loop 2010BA or 2010CA in the segment DMG05 as a numeric value. Acceptable codes are 1 = American Indian/Eskimo/ Aleut, 2 = Asian or, Pacific Islander, 3 =Black , 4 = White and 5 = Other Race. In order to obtain this data, the hospital staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the hospital staff is to use its best judgment to make the correct classification based on available data.

(2) Patient ethnicity - This data element shall be reported at Loop 2300 in the segment NTE02 as a numeric value. Acceptable codes are 1 = Hispanic or Latino Origin and 2 = Not of Hispanic or Latino Origin. In order to obtain this data, the hospital staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the hospital staff is to use its best judgment to make the correct classification based on available data.

(3) Other E-codes - These additional E-codes (maximum of nine (9)) shall be reported in the following ANSI X12N Form 837 locations: Loop 2300, segments, HI05-2, HI06-2, HI07-2, HI08-2, HI09-2, HI10-2, HI11-2 and HI12-2. (The first E-code is reported in Loop 2300 segment HI04-2).

(4) THCIC Identification Number - This data element shall be submitted in data segment REF02 of Loop 2010AA or Loop 2010AB (in the Pay-to provider reported provided the services), or Loop 2310E (if the Service Facility Provider is submitted).

(d) Hospitals shall submit the required minimum data set for all patients for which a discharge claim is required by this title. The required minimum data set includes the following data elements as listed in this subsection:

(1) Patient Name

(A) Patient Last Name

(B) Patient First Name

(C) Patient Middle Initial

(2) Patient Address

(A) Patient Address Line 1

(B) Patient Address Line 2 (if applicable)

(C) Patient City

(D) Patient State

(E) Patient ZIP

(F) Patient Country (if address is not in United States of America, or one of its territories)

(3) Patient Birth Date

(4) Patient Sex

(5) Patient Race

(6) Patient Ethnicity

(7) Patient Social Security Number

(8) Patient Account Number

(9) Patient Medical Record Number

(10) Claim Filing Indicator Code (Payer Source - primary and secondary (if applicable for secondary payer source)

(11) Payer Name - Primary and secondary (if applicable, for both)

(12) National Plan Identifier - for primary and secondary (if applicable) payers (National Health Plan Identification number, if applicable and when assigned by the Federal Government)

(13) Type of Bill

(14) Statement Dates (replaces Statement From and Statement Thru dates)

(15) Admission / Start of Care

(A) Admission / Start of Care Date

(B) Admission / Start of Care Hour

(16) Admission Type

(17) Admission Source

(18) Patient (Discharge) Status

(19) Patient Discharge Hour

(20) Principal Diagnosis

(21) Admitting Diagnosis

(22) Principle External Cause of Injury (E-Code)

(23) Other Diagnosis Codes - up to 24 occurrences (all applicable)

(24) External Cause Of Injury (E-Code) - up to 9 occurrences (if applicable)

(25) Principal Procedure Code (if applicable)

(26) Principal Procedure Date (if applicable)

(27) Other Procedure Codes - up to 24 occurrences (if applicable)

(28) Other Procedure Dates - up to 24 occurrences (if applicable)

(29) Occurrence Span Code - up to 24 occurrences (if applicable)

(30) Occurrence Span Code Associated Date - up to 24 occurrences (if applicable)

(31) Occurrence Code - up to 24 occurrences (if applicable)

(32) Occurrence Code Associated Date - up to 24 occurrences (if applicable)

(33) Value Code - up to 24 occurrences (if applicable)

(34) Value Code Associated Amount - up to 24 occurrences (if applicable)

(35) Condition Code - up to 24 occurrences (if applicable)

(36) Attending Physician or Attending Practitioner Name

(A) Attending Practitioner Last Name

(B) Attending Practitioner First Name

(C) Attending Practitioner Middle Initial

(37) Attending Practitioner Primary Identifier (National Provider Identifier, when HIPAA rule is implemented)

(38) Attending Practitioner Secondary Identifier (Texas state license number or UPIN)

(39) Operating Physician or Other Practitioner Name (if applicable)

(A) Operating Physician or Other Practitioner Last Name

(B) Operating Physician or Other Practitioner First Name

(C) Operating Physician or Other Practitioner Middle Initial

(40) Operating Physician or Other Practitioner Primary Identifier (National Provider Identifier, when HIPAA rule is implemented)

(41) Operating Physician or Other Practitioner Secondary Identifier (Texas state license number or UPIN)

(42) Total Claim Charges

(43) Revenue Service Line Details (up to 999 service lines) (all applicable)

(A) Revenue Code

(B) Procedure Code

(C) HCPCS/HIPPS Procedure Modifier 1

(D) HCPCS/HIPPS Procedure Modifier 2

(E) HCPCS/HIPPS Procedure Modifier 3

(F) HCPCS/HIPPS Procedure Modifier 4

(G) Charge Amount

(H) Unit Code

(I) Unit Quantity

(J) Unit Rate

(K) Non-covered Charge Amount

(44) Service Provider Name

(45) Service Provider Primary Identifier - Provider Federal Tax ID (EIN) or National Provider Identifier (when HIPAA rule is implemented)

(46) Service Provider Address

(A) Service Provider Address Line 1

(B) Service Provider Address Line 2 (if applicable)

(C) Service Provider City

(D) Service Provider State

(E) Service Provider ZIP

(47) Service Provider Secondary Identifier - THCIC 6-digit Hospital ID assigned to each facility

(e) For patients which are covered by 42 USC 290dd-2 and 42 CFR Part 2.1, the hospital shall submit the following patient identifying information or default values in the specified Record and Field locations as required by subsection (a) of this section:

(1) Patient Account Number - This alphanumeric patient control number shall be reported. This number is unique to the institution and episode of care and will be used by the hospital to review and certify data.

(2) Last Name - The patient's last name shall be removed and replaced with "Doe".

(3) First Name - The patient's first name shall be removed and replaced with "Jane" if female, or "John" if male, and can include a sequential number (e.g., John1, John2, John3... etc.).

(4) Middle Initial - The patient's middle initial shall be removed and left blank (space filled).

(5) Date of Birth - The patient's date of birth shall be reported.

(6) Address - The patient's residence address shall be removed and replaced with the hospital's street address.

(7) City - The patient's city of residence shall be reported.

(8) State - The patient's state of residence shall be reported.

(9) ZIP Code - The patient's ZIP code of residence shall be reported.

(10) Medical Record Number - The patient's medical record number shall be removed and replaced with "99999" and reported.

(11) Social Security Number - The patient's Social Security Number shall be removed and replaced with "999999999".

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2003.

TRD-200303673

Jim Loyd
Executive Director
Texas Health Care Information Council
Effective date: July 6, 2003
Proposal publication date: March 21, 2003
For further information, please call: (512) 482-3320

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 3. TRAFFIC LAW ENFORCEMENT

SUBCHAPTER D. TRAFFIC SUPERVISION

37 TAC §3.62

The Texas Department of Public Safety adopts amendments to §3.62, concerning Regulations Governing Transportation Safety, without changes to the proposed text as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3484).

Amendments to §3.62 are necessary in order to implement the registration enforcement provisions of the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 350, 387, and 392. Additional amendments have also been included to clarify language of existing provisions of §3.62.

The department held a public hearing on Tuesday, June 3, 2003. Mr. Les Findeisen, Texas Motor Transportation Association was the only person to attend the public hearing. The department received no written or oral comments.

The amendments are adopted pursuant to Texas Transportation Code, Chapter 644, and Texas Government Code, §411.006(4) and §411.018, which provide the director of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and which authorize the director to adopt rules regulating the safe operation of commercial motor vehicles and the safe transportation of hazardous materials.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303509
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 1, 2003
Proposal publication date: April 25, 2003
For further information, please call: (512) 424-2135

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PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER A. BASIC SERVICES

37 TAC §91.25

The Texas Youth Commission (TYC) adopts new §91.25, concerning Youth with Limited English Proficiency, without changes to the proposed text as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3486) and will not be republished.

The justification for the new rule is compliance with federal and state laws relating to youth who do not speak English.

The new rule will provide for reasonable access to all programs and services for TYC youth who are determined to have Limited English Proficiency.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.022, which provides the Texas Youth Commission with the authority to establish procedures that provide reasonable access to programs and services for youth who do not speak English.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303522
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: July 1, 2003
Proposal publication date: April 25, 2003
For further information, please call: (512) 424-6301

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SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.84

The Texas Youth Commission (TYC) adopts new §91.84, concerning Health Insurance, without changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3234) and will not be republished.

The justification for the new rule is to allow this rule's previous rule number to be used for a new policy which falls logically and sequentially between other existing rules.

The new rule will publish an existing rule under a new rule number.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Family Code, §54.06, which provides the Texas Youth Commission with the authority to seek reimbursement from third parties payers for medical expenses of youth committed to the agency.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303523

Steve Robinson
Executive Director
Texas Youth Commission
Effective date: July 1, 2003
Proposal publication date: April 18, 2003
For further information, please call: (512) 424-6301

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37 TAC §91.87

The Texas Youth Commission (TYC) adopts the repeal of §91.87, concerning Health Insurance, without changes to the proposal as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3234) and will not be republished.

The justification for the repeal is to allow a new rule relating to suicide alert procedures to be published in logical and sequential order.

The repeal will allow the section to be published under a new number.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §54.06, which provides the Texas Youth Commission with the authority to seek reimbursement form third party payers for medical expenses of youth committed to the agency.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200303524
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: July 1, 2003
Proposal publication date: April 18, 2003
For further information, please call: (512) 424-6301

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37 TAC §91.87

The Texas Youth Commission (TYC) adopts new §91.87, concerning Suicide Alert Explanation of Terms, with changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3234). The change to the proposed text under Overt Suicide Behavior clarifies the distinction between self-injury and serious self-injury. Other changes include minor grammatical changes.

The justification for the new rule is to define terms used throughout the agency's policies regarding suicide alert procedures.

The new rule will identify, assess, protect, and treat youth who verbalize or display suicidal behavior.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.076 Type of Treatment Permitted, which provides the Texas Youth Commission with the authority to provide any necessary medical or psychiatric treatment.

The adopted rule implements the Human Resource Code, §61.034.

§91.87. Suicide Alert Explanation of Terms.

(a) Purpose. The purpose of this rule is to establish explanations of terms used pursuant to (GAP) §91.88 of this title (relating to Suicide Alert for Secure Programs), (GAP) §91.89 of this title (relating to Suicide Alert for Non-Secure Programs), and (GAP) §91.90 of this title (relating to Suicide Alert for Parole) which establish procedures for the identification, assessment, treatment, and protection of youth who may be at risk for suicide.

(b) Explanation of Terms Used.

(1) Secure Program--A TYC institution or contract program which contains a security unit.

(2) Non-Secure Program--A TYC institution or contract program which does not contain a security unit.

(3) Mental Health Professional (MHP)--An individual who is a Psychiatrist, doctoral level Psychologist, masters level Associate Psychologist, Licensed Professional Counselor, or a Licensed Social Worker with an Advanced Clinical Practitioner (LMSW-ACP) designation. Prior consultation with and the signature of the DMHP is not necessary for a licensed doctoral level Psychologist acting as an MHP who determines that a change in SA status or observation/precaution level is warranted. The licensed doctoral level psychologist shall inform the DMHP of any such changes in youth status.

(4) Designated Mental Health Professional (DMHP)--In TYC institutions, the DMHP shall be a Psychiatrist or a doctoral level Psychologist and is the individual that has the primary responsibility and accountability for the evaluation, monitoring, and treatment of a youth referred as a suicide risk. Where available, the director of clinical services is the DMHP.

(5) Trained Designated Staff--Staff trained to conduct a Suicide Risk Screening. In TYC programs this will include superintendent, assistant superintendent, administrative duty officer (ADO), program administrator (PA), institution placement coordinator (IPC), principal, caseworker, and Juvenile Corrections Officer (JCO) V or VI. A JCO V or VI may only conduct a suicide risk screening during the late night shift in secure programs. JCO staff in TYC halfway houses may not conduct suicide risk screenings.

(6) Appropriate Administrator--The highest level local administrative authority in non-secure programs.

(7) Suicide Alert-Pending (SA-P)--A temporary status that begins with the identification of a potentially suicidal youth, by staff, and terminates after a suicide risk assessment by an MHP.

(8) Suicide Alert (SA)--A status that begins following a face-to-face suicide risk assessment by an MHP indicating that a youth is at risk to attempt suicide or self-injury and is in need of increased supervision.

(9) Overt Suicide Behavior--A physical act or stated intention associated with a potentially dangerous or life threatening outcome or imminent risk of serious self-injury. The behavior itself may lack the immediate danger, but accidental risk of death or serious injury is likely. Examples of overt suicidal behavior include, but are not limited to, jumping from heights with intent to cause injury, serious and repeated head banging, tying a ligature around the neck, suffocation, medication overdose, serious self-mutilation requiring nursing or medical care (e.g., near major veins or arteries), or stated intent to commit suicide with a specific plan to seriously harm self.

(10) Non-Lethal Suicide Behavior--The superficial self-injury, or sudden change in behavior suggesting risk of self-injury. For example, the youth may display vegetative symptoms of depression, verbalize a non-specific suicide plan, place an object loosely around the neck, or engage in superficial self-injurious behavior, without imminent risk of harm.

(11) Suicide Risk Screening--A standardized face-to-face interview by an MHP or trained designated staff in consultation with an MHP, to determine the placement of youth in security intake or general population.

(12) Suicide Risk Assessment--A clinical face-to-face interview conducted by an MHP for the determination of suicide risk. The youth participates in the interview and has an opportunity to make his/her own statement. The assessment is required for removal of SA-P status, placement on SA status, continuation of SA status, removal of SA status, or admission and extensions to protective custody.

(13) Protective Custody--A segregation program in secure programs designed for the placement of youth, as determined by an MHP, who are at risk of serious harm to themselves, and confinement is necessary to protect the youth from self-harm. A youth may be admitted to protective custody only if the youth has received a face-to-face assessment by an MHP.

(14) Secure Observation Area--A location in the security unit, infirmary, or other secure area where staff may visually check youth to ensure safety.

(15) Suicide Levels of Observation--Levels of observation, which are automatically assigned by policy or determined by an MHP to ensure youth safety. Levels of observation are:

(A) One-to-One (1:1) Observation--At a minimum, an assigned staff is within five (5) feet and youth is within sight of staff at all times. The staff will not be assigned other concurrent duties and must be formally relieved of the duty by another staff or by the discontinuation of the 1:1 status. This level of observation may be assigned to youth in the general population or in the security unit.

(B) Constant Observation--Youth is within sight of an assigned staff at all times. The staff may have concurrent duties if the duties do not interfere with observation of the youth. Other staff may assist in visual observation of the youth. This level of observation may be assigned to youth in the general population or in the security unit.

(C) Close Observation--Youth is visually checked at least once every ten (10) minutes. Staff may be involved in concurrent duties that allow for the flexibility needed to check the youth. This level of observation may be assigned to youth in the general population, but may not be applied to youth in the security unit where youth are visually checked every three (3) minutes for overt suicidal behavior and every five (5) minutes for non-lethal suicidal behavior.

(16) Minimum Dorm Precautions--A youth on SA-P or SA status on a dorm shall be monitored by staff according to the level of observation. These youth should have reduced or monitored access, approved by the MHP, to potentially dangerous objects such as clothing (e.g., belts, hair accessories, bath robe, bras, belts, shoes/shoe laces), personal hygiene items (e.g., razors) or chemical cleaning agents (e.g., bleach, cleaning solvents), and have a system to ensure constant observation by staff, unless the level of observation is reduced by an MHP. Youth must sleep in direct sight of staff. This may involve sleeping on a mattress pulled in front of staff desk, sleeping in a day area in direct view of staff, sleeping on a bunk/bed in direct sight of staff, or any other appropriate method of supervision. In consultation with the principal and/or assistant principal, the youth will have monitored or restricted access to vocational instruction, or on campus employment, or any other location where there is access to potentially lethal and/or harmful objects/machinery. Youth may not participate in off-campus employment or privileges except for medical treatment or court hearings.

(17) Minimum Secure Observation Area Precautions--A youth on SA-P or SA status in a secure observation area other than the security unit shall be monitored by staff according to the level of observation. These youth should have reduced or monitored access, approved by the MHP, to potentially dangerous objects such as clothing (e.g., belts, hair accessories, bath robe, bras, belts, shoes/shoe laces), personal hygiene items (e.g., razors) or chemical cleaning agents (e.g., bleach, cleaning solvents), and have a system to ensure constant observation by staff, unless the level of observation is reduced by an MHP. Youth in secure observation areas must sleep in direct sight of staff. This may involve sleeping on a mattress pulled in front of staff desk, sleeping in a day area in direct view of staff, sleeping on a bunk/bed in direct sight of staff, or any other appropriate method of supervision. The youth may not participate in off-campus education, employment or privileges without the approval of the MHP except for medical treatment or court hearings.

(18) Minimum Security Precautions for Secure Programs.

(A) Non-Lethal Suicide Precautions--A youth is admitted to security intake according to (GAP) §97.37 of this title (relating to Security Intake), or protective custody according to (GAP) §97.45 of this title (relating to Protective Custody), and is visually checked once every five (5) minutes by staff. The room is secured by security staff for safety prior to placement and checked for safety every shift or as needed between periods of movement to ensure youth safety. Staff reduces access to potentially dangerous objects (e.g., limited or controlled/supervised access to plastic eating utensils, bed linens), issues suicide safe bedding (e.g. use of suicide blanket). Access to razors is approved by the MHP and visually monitored by staff. Standard suicide precautions are implemented for any youth referred for non-lethal suicide behavior or for a youth who originally engaged in overt suicide behavior but who has stabilized to the point that a reduction in precaution is indicated. The precautions may be modified, by telephone consultation or following a face-to-face suicide risk assessment, by an MHP.

(B) Overt Suicide Precautions--A youth is admitted to security intake according to (GAP) §97.37 of this title (relating to Security Intake), or protective custody according to (GAP) §97.45 of this title (relating to Protective Custody), or a secure observation area, or the infirmary and is visually checked once every three (3) minutes by staff or, if necessary, placed on one-to-one (1:1) or constant observation. For youth who engage in overt suicide behavior as defined in this policy, staff will:

(i) issue protective clothing (e.g., disposable paper gown, suicide barrel, etc.). Staff verbally instructs youth to put on protective clothing and to remove any undergarment. In accordance with (GAP) §97.23 of this title (relating to Use of Force) use of force may be initiated, but only as a last resort. Staff must consult with the facility administrator and/or MHP, regarding alternative interventions that do not involve use of force. When physical or mechanical restraint is employed, at least one (1) staff conducting the restraint must be the same gender as the youth. Staff provides repeated opportunities during the restraint for youth to remove own clothing. If there is no same gender staff available, the youth remains on one-to-one (1:1) observation until such staff is available.

(ii) implement other security precautions, including:

(I) suicide safe bedding (e.g. suicide blanket); and

(II) where available, placement in a suicide safe room (e.g., no bed frame or toiletry in room, video camera, etc.) which is checked for safety every shift or as needed between periods of movement; and

(III) placement on a "finger food" diet to ensure youth safety; and

(IV) access to razors only if approved by the MHP and visually monitored by staff.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303525
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: July 1, 2003
Proposal publication date: April 18, 2003
For further information, please call: (512) 424-6301

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37 TAC §91.88

The Texas Youth Commission (TYC) adopts new §91.88, concerning Suicide Alert for Secure Programs, with changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3236). Change to the proposed text consists of minor grammatical corrections.

The justification for the new rule is to identify, assess, protect, and treat youth who verbalize or display suicidal behavior.

The new rule will establish procedures to be used within TYC secure programs for the identification and treatment of potentially suicidal TYC youth.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.076 Type of Treatment Permitted, which provides the Texas Youth Commission with the authority to provide any necessary medical or psychiatric treatment.

The adopted rule implements the Human Resource Code, §61.034.

§91.88. Suicide Alert for Secure Programs.

(a) Purpose. The purpose of this rule is to establish procedures for the identification, assessment, treatment, and protection of youth that may be at risk for suicide. Treatment will be provided within the least restrictive environment necessary to ensure safety.

(b) Applicability.

(1) This rule applies to all youth currently assigned to placement in Texas Youth Commission (TYC) institutions and secure contract programs.

(2) This rule must be read in conjunction with (GAP) §91.87 of this title (relating to Suicide Alert Explanation of Terms).

(3) If a youth is admitted to protective custody following a face-to-face assessment by a mental health professional (MHP), this rule must also be applied in conjunction with (GAP) §97.45 of this title (relating Protective Custody).

(c) Initial Identification of Youth at Risk for Suicide.

(1) Any staff hearing or observing a youth engage in or verbalize non-lethal or overt suicide behavior must immediately respond in a manner that protects youth safety. Staff will immediately seek medical attention for youth if necessary. Staff must provide minimum dorm precautions to prevent dangerous or potentially dangerous behavior, which includes constant observation and confiscating materials, which could potentially be used for self-injury.

(2) A youth in general population who has engaged in or verbalized suicide behavior must be referred to security intake according to the procedures in (GAP) §97.37 of this title (relating to Security Intake) and immediately placed on Suicide Alert Pending (SA-P). The youth is placed on overt suicide security precautions upon arrival to security intake.

(3) A youth in a segregation program who has engaged in or verbalized suicide behavior will be immediately placed on Suicide Alert - Pending (SA-P) with overt suicide precautions.

(4) An MHP and a trained designated staff approved to conduct suicide risk screenings are contacted immediately.

(5) A face-to-face suicide risk screening will be initiated within one (1) hour of referral to security intake by a trained designated staff or an MHP. An MHP will make a decision, based on a clinical determination of risk and the suicide risk screening, whether the youth will temporarily remain in security intake or be released to the general population.

(6) An MHP will conduct a face-to-face suicide risk assessment to determine suicide alert (SA) status and treatment/placement options.

(d) Temporary Placement of Youth Following a Suicide Risk Screening. Prior to a face-to-face suicide risk assessment, the following two (2) temporary placement options are available to an MHP after a trained designated staff conducts a suicide risk screening:

(1) Retain Youth in Security Intake. Youth who have engaged in overt suicide behavior must be retained in security intake. Youth who have engaged in non-lethal suicide behavior may also be retained in security intake, at the discretion of an MHP.

(A) Youth will continue on SA-P status. An MHP will determine the suicide level of observation and minimum security precautions.

(B) For youth engaging in overt suicidal behavior, the MHP must conduct a face-to-face suicide risk assessment within three (3) hours of referral to security intake.

(C) Youth engaging in non-lethal suicide behavior are maintained in security intake up to 24 hours after referral, pending a face-to-face assessment by an MHP.

(2) Return Youth to General Population. Return to general population is available only for youth who have engaged in non-lethal suicide behavior.

(A) Youth will continue on SA-P status on, at a minimum, constant observation.

(B) Dorm staff will monitor the youth according to minimum dorm precautions.

(C) The MHP will monitor youth's mental status by consulting with appropriate staff at least every 24 hours.

(D) The MHP will conduct a face-to-face suicide risk assessment within 72 hours of initial referral to security intake.

(3) If a youth on SA-P at any time displays behavior suggesting deterioration in emotional condition, appropriate actions will be taken to ensure the youth's safety, which may include re-admission to security intake if the youth has been returned to the general population. The MHP is immediately advised of the change in the youth's condition.

(e) MHP Face-to-Face Suicide Risk Assessment.

(1) Based on the face-to-face suicide risk assessment with the youth, an MHP determines whether to place the youth on SA. An MHP may do one (1) of the following:

(A) remove the SA-P status;

(B) place the youth on SA status and assign a level of observation, which may include admission to protective custody. If a youth is admitted to Protective Custody, this policy must be read in conjunction with (GAP) §97.45 of this title (relating to Protective Custody);

(C) seek emergency psychiatric placement if the youth is in serious imminent risk of self-injury and cannot be safely managed in protective custody. The MHP, in consultation with the Designated Mental Health Professional (DMHP) or contract psychiatrist, places the youth on one-to-one (1:1) observation and seeks placement in the following order:

(i) the Corsicana Stabilization Unit (CSU);

(ii) the nearest MHMR hospital; or

(iii) as a last resort, a private psychiatric hospital.

(D) admit the youth to the infirmary with one-to-one (1:1) observation if no other options are available, or there are compelling medical reasons.

(2) An MHP, in consultation with the DMHP, develops a plan of treatment to ensure youth safety. The plan includes the monitoring of youth on SA status and regular individual counseling and assessment sessions until youth is removed from SA. The plan also includes consultation with the youth's direct care staff, caseworker, and/or program administrator.

(3) The MHP who is assigned to the youth on SA status may, with prior consultation with the DMHP, release a youth from protective custody or reduce the level of observation of youth on SA status.

(f) Removal of Youth from SA Status.

(1) The MHP who is assigned to the youth on SA status may, with prior consultation with the DMHP, remove the SA status.

(2) The DMHP may remove a youth from SA status or modify the level of supervision upon a face-to-face interview with the youth.

(g) Transfer of Youth on SA Status.

(1) Youth who are on SA status may not be moved to another placement unless:

(A) the receiving placement is a TYC institution or residential treatment center, or other placement having on-site psychiatric staff who may function as an MHP; and

(B) the DMHP at the sending site approves and coordinates the transfer of the youth and clinical responsibilities in consultation with the DMHP at the receiving site.

(2) Youth who transfer from one facility to another must receive a suicide risk assessment from the receiving facility, within 72 hours of arrival if:

(A) youth is on SA or SA-P status; or

(B) youth has history of suicide behavior within the past six (6) months.

(h) Notification.

(1) Every TYC facility and secure program develops a system of notification of key personnel to identify youth on SA or SA-P.

(2) Facility staff shall notify the parent or guardian of a youth placed on SA as a result of overt suicide behavior and when the youth is removed from SA.

(3) Appropriate central office staff will be notified of life threatening suicide attempts or completed suicide.

(i) Training. All direct care staff in TYC facilities and in secure programs will receive initial suicide prevention training and annual updates. Staff designated to conduct suicide screenings receive training from an MHP regarding suicide alert policy, suicide indicators, and suicide screening.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303526
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: July 1, 2003
Proposal publication date: April 18, 2003
For further information, please call: (512) 424-6301

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37 TAC §91.89

The Texas Youth Commission (TYC) adopts the repeal of §91.89, concerning Suicide Alert, without changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3238).

The justification for the repeal is to allow a new rule relating to suicide alert procedures to be published.

The repeal will allow for a new rule to be published in its place.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.076 Type of Treatment Permitted, which provides the Texas Youth Commission with the authority to provide any necessary medical or psychiatric treatment.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303528

Steve Robinson
Executive Director
Texas Youth Commission
Effective date: July 1, 2003
Proposal publication date: April 18, 2003
For further information, please call: (512) 424-6301

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37 TAC §91.89

The Texas Youth Commission (TYC) adopts new §91.89, concerning Suicide Alert for Non-Secure Programs, with changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3238). Changes to the proposed text consist of minor grammatical corrections.

The justification for the new rule is to identify, assess, protect, and treat youth who verbalize or display suicidal behavior.

The new rule will establish procedures to be used within TYC secure programs for the identification and treatment of potentially suicidal TYC youth.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.076 Type of Treatment Permitted, which provides the Texas Youth Commission with the authority to provide any necessary medical or psychiatric treatment.

The adopted rule implements the Human Resource Code, §61.034.

§91.89. Suicide Alert for Non-Secure Programs.

(a) Purpose. The purpose of this rule is to establish procedures for the identification, assessment, protection, and treatment of youth that may be at risk for suicide within the least restrictive environment to ensure safety.

(b) Applicability. This rule applies to all youth currently assigned to placement in Texas Youth Commission (TYC) medium restriction halfway houses, and non-secure contract residential facilities. This rule must be applied in conjunction with (GAP) §91.87 of this title (relating to Suicide Alert Explanation of Terms).

(c) Initial Identification of Youth at Risk for Suicide.

(1) Any staff hearing or observing a youth engage in or verbalize non-lethal or overt suicide behavior must immediately respond in a manner that protects youth safety. Staff will immediately seek medical attention if necessary. Staff must provide, at a minimum, constant observation to prevent dangerous or potentially dangerous behavior, which includes confiscating materials used or which could potentially be used for self-injury.

(2) Youth who have engaged in non-lethal or overt suicide behavior must immediately be designated as Suicide Alert - Pending (SA-P) and placed in a secure observation area with minimum secure observation area precautions, pending an assessment by a mental health professional (MHP).

(3) Youth on SA-P are not allowed community access, including community service, employment, or academic attendance, unless supervised on, at a minimum, constant observation by staff.

(4) A trained designated staff initiates a face-to-face suicide risk screening within one (1) hour and consults with an appropriate administrator regarding the results of the screening.

(5) The appropriate administrator will assign a level of observation based on the results of suicide risk screening and contact a MHP to arrange a face-to-face suicide risk assessment.

(A) For youth engaging in non-lethal behavior, the administrator will ensure the youth remains in a secure observation area on at least constant observation, pending a face-to-face assessment by an MHP.

(B) For youth engaging in overt suicide behavior, the administrator will ensure the youth remains in a secure observation area on one-to-one (1:1) observation, until a face-to-face assessment by an MHP is conducted.

(6) In the event that a youth on SA-P, pending assessment by an MHP, displays behavior suggesting deterioration of emotional condition indicating serious or imminent risk of self-injury, the appropriate administrator coordinates increased supervision, to include one to one (1:1) observation and/or emergency psychiatric care. Increased supervision for youth not on parole status may include temporary admission to a high restriction TYC facility.

(7) If the time required to obtain an MHP to conduct a suicide risk assessment is exceeded, the youth remains on one-to-one (1:1) observation. The facility staff notifies the appropriate administrator in person or directly by telephone to arrange staff coverage and required supervision. The appropriate administrator may secure emergency psychiatric care to obtain an evaluation of the youth.

(d) MHP Face-to-Face Suicide Risk Assessment.

(1) For Non-Lethal Suicidal Behavior. Within 72 hours of placement on SA-P status, the MHP must do the following:

(A) consult with appropriate staff to review the results of the suicide risk screening;

(B) conduct a face-to-face suicide risk assessment;

(C) determine whether to remove the SA-P status or place the youth on Suicide Alert (SA);

(D) determine whether youth may be safely managed within the structure of the current placement; and

(E) assign the level of observation and develop a plan of treatment for youth placed on SA, including the supervision requirements and degree of community restrictions necessary to ensure youth safety.

(2) For Overt Suicidal Behavior. Within three (3) hours of placement on SA-P, the MHP must do the following:

(A) consult with appropriate staff to review the results of the suicide risk screening;

(B) conduct a face-to-face suicide risk assessment;

(C) determine whether to remove the SA-P status or place the youth on SA;

(D) determine whether youth may be safely managed within the structure of the current placement; and

(E) assign the level of observation and develop a plan of treatment for youth placed on SA, including the supervision requirements and degree of community restriction necessary to ensure youth safety.

(3) Youth Who Cannot Be Safely Managed in Current Placement. If an MHP determines that a youth on SA cannot be safely managed within the structure of the current placement, the appropriate administrator will:

(A) ensure one-to-one observation for the youth until an emergency psychiatric placement is obtained;

(B) obtain emergency placement directly to the Corsicana Stabilization Unit (CSU) or, if the CSU is not able to receive the youth, placement in a local MHMR hospital or, as a last resort, a private psychiatric hospital. For youth not on parole status, the administrator may seek temporary admission to protective custody in a high restriction TYC facility pending emergency psychiatric placement; and

(C) maintain communication with staff at the emergency placement to obtain current mental status information and assess the length and suitability of the current placement. If the emergency placement exceeds five (5) days, the administrator initiates alternate placement in a more secure facility.

(4) In the event that a youth on SA in a non-secure placement displays behavior that indicates a serious or imminent risk of self-injury, an MHP is immediately contacted and the youth is placed on one-to-one (1:1) observation pending a face-to-face suicide risk assessment by and MHP. The appropriate administrator may seek emergency psychiatric care.

(5) For youth maintained on SA and on constant and/or one-to-one observation longer than seven (7) days in placements other than the Corsicana Stabilization Unit, the appropriate administrator in TYC Halfway House programs or the appropriate TYC staff for contract programs will pursue an alternative placement with longer-term stabilization, clinical resources, and increased supervision where the youth may be safely managed.

(e) Removal of Youth from SA Status. The MHP that initially placed the youth on SA may remove the youth from SA status or reduce the level of supervision immediately following a face-to-face assessment. If the youth has been transferred to another TYC operated institution for emergency placement, the MHP at the receiving facility may remove the youth from SA status or reduce the level of supervision immediately following a face-to-face assessment.

(f) Notification.

(1) Every TYC facility and contract residential program develops a system of notification of key personnel to identify youth on SA or SA-P in the general population.

(2) Facility staff shall notify the parent or guardian of a youth placed on SA as a result of overt suicide behavior and when the youth is removed from SA.

(3) Appropriate central office staff will be notified of life threatening suicide attempts or completed suicide.

(g) Training. All direct care staff in TYC operated facilities and in contract residential programs will receive initial suicide prevention training and annual updates. Staff designated to conduct suicide screenings receive annual training by an MHP regarding suicide alert policy, suicide indicators, and suicide screening.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303527

Steve Robinson
Executive Director
Texas Youth Commission
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Proposal publication date: April 18, 2003
For further information, please call: (512) 424-6301

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37 TAC §91.90

The Texas Youth Commission (TYC) adopts new §91.90, concerning Suicide Alert for Parole, with changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3240). Changes to the proposed text consist of minor grammatical corrections.

The justification for the new rule is to identify youth on parole who verbalize or display suicidal behavior.

The new rule will establish procedures to be used by staff when they are made aware of potentially suicidal behavior exhibited by TYC youth paroled in the community.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.040, which provides the Texas Youth Commission with the authority to provide active parole supervision for youth given conditional release.

The adopted rule implements the Human Resource Code, §61.034.

§91.90. Suicide Alert for Parole.

(a) Purpose. The purpose of this rule is to establish procedures for the identification, assessment, treatment and protection of youth that may be at risk for suicide within the community on parole to ensure safety.

(b) Applicability. This rule applies to all youth currently assigned to parole in the community in the Texas Youth Commission (TYC). This rule must be applied in conjunction with (GAP) §91.87 of this title (relating to Suicide Alert Explanation of Terms).

(c) Initial Identification of Youth at Risk for Suicide.

(1) Any staff hearing or observing a youth engage in or verbalize non-lethal or overt suicide behavior must immediately respond in a manner that protects youth safety.

(2) For youth engaging in non-lethal suicide behavior, staff will immediately notify the family or legal guardian of the youth's behavior and provide community resource information where a mental health professional (MHP) may be consulted.

(3) For youth engaging in overt suicide behavior, staff will immediately notify local law enforcement and the family or legal guardian and provide community resource information where an MHP may be consulted.

(d) Notification. For youth who have engaged in life threatening overt suicide behavior or who have completed suicide, staff will immediately report the incident to executive staff in central office.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Robinson
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CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.17

The Texas Youth Commission (TYC) adopts an amendment to §95.17, concerning Behavior Management Program, without changes to the proposed text as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3708).

The justification for amending the section is to ensure the safety of youth and staff at TYC institutions.

The amendment will establish that this rule does not apply to youth who are in the security unit die to danger of injury to self.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Robinson
Executive Director
Texas Youth Commission
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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.23

The Texas Youth Commission (TYC) adopts an amendment to §97.23, concerning Use of Force, without changes to the proposed text as published in the May 16, 2003, issue of the *Texas Register* (28 TexReg 3941).

The justification for amending the section is to ensure the safety and protection of TYC youth who display overt suicidal behavior.

The amendment to the section will establish that physical restraint may be used to protect a youth form imminent self-harm, including the removal of or access to items or clothing which could potentially be used for self-harm. Protective clothing will be issued to such youth.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to confine a youth under conditions it believes are best designed for the youth's welfare

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Robinson
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Texas Youth Commission
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37 TAC §97.37

The Texas Youth Commission (TYC) adopts an amendment to §97.37, concerning Security Intake, with changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3243). The change to the proposed text consists of a minor grammatical correction.

The justification for amending the section is the identification, assessment, protection, and treatment of youth who have verbalized or engaged in suicidal behavior.

The amendment will establish procedures for admitting potentially suicidal youth to security intake. The amendment also establishes procedures and controls to ensure that such youth are assessed in person by a mental health professional.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to establish rules appropriate to welfare and rehabilitation of youth in its care.

The adopted rule implements the Human Resource Code, §61.034.

§97.37. Security Intake.

(a) Purpose.

(1) The purpose of this rule is to establish criteria and procedure for segregating youth from the general population under certain circumstances. Each Texas Youth Commission (TYC) operated institution or secure contract program provides for segregation programs. Placement in a segregation program may be imposed only in specific situations for specified periods of time. Youth who may be eligible for a placement in a segregation program may be initially referred to the security intake. Such youth are placed into a secure setting that is controlled exclusively by staff.

(2) If a youth from the community is referred to the institution for placement in protective custody, and the youth arrives without a formal assessment by a mental health professional (MHP), that youth will be placed in security intake, pending face-to-face assessment.

(b) Applicability. This rule does not apply to:

(1) the use of the same or adjacent space when used specifically as a security program. See (GAP) §97.40 of this title (relating to Security Program);

(2) the use of the same or adjacent space when used specifically as detention in lieu-of-county detention or specifically as institution detention. See (GAP) §97.43 of this title (relating to Institution Detention Program);

(3) the use of the same or adjacent space when used specifically as a disciplinary segregation program. See (GAP) §95.17 of this title (relating to Behavior Management Program);

(4) the use of the same or adjacent space when used specifically as protective custody. See (GAP) §97.45 of this title (relating to Protective Custody).

(5) the use of the same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation); and

(6) the aggression management program (AMP). See (GAP) §95.21 of this title (relating to Aggression Management Program).

(c) Referral and Admission Criteria. A youth may be admitted to security intake if there is reason to believe, based on overt acts by the youth, and/or under the following circumstances:

(1) the youth is a serious and continuing escape risk; or

(2) the youth is a serious and immediate physical danger to others and staff cannot protect others except by referring the youth to security intake; or

(3) the youth engages in or verbalizes overt or non-lethal suicide behavior as defined in (GAP) §91.87 of this title (relating to Suicide Alert Explanation of Terms); or

(4) confinement is necessary to prevent imminent and substantial destruction of property; or

(5) confinement is necessary to control behavior that creates disruption of the youth's current program; or

(6) the youth requests confinement, unless self-referrals have been disallowed by the superintendent or designee; or

(7) staff requests detention for a youth.

(d) Referral and Admission Process.

(1) A youth may be referred to the security intake by staff or at the youth's own request.

(2) A youth may be held in security intake on referral for up to one (1) hour.

(3) The superintendent or designee may extend the one (1)-hour time limit up to one (1) additional hour, if requested and necessary, in order to make a proper decision.

(4) Within one (1) hour (or two (2) hours if an extension has been granted) of the youth's arrival at security intake, the designated staff shall determine whether criteria for admission have been met. If admission criteria are met, designated staff may admit youth to the security intake for up to 24 hours.

(5) Designated staff include the superintendent, assistant superintendent, administrative duty officer (ADO), program administrator (PA), institution placement coordinator (IPC), principal, psychologist, caseworker, or designated juvenile correctional officer (JCO) VI trained in the security intake policy and procedure to admit youth to the security intake program. On the late night shift, a JCO V trained in the security intake admission policy and procedure may admit a youth to security intake. The director of security may not admit a youth to security intake.

(6) If a youth is referred to security intake for danger of injury to self, this policy needs to be read in conjunction with (GAP) §91.88 of this title (relating to Suicide Alert for Secure Programs). Security staff shall immediately contact an MHP and a trained designated staff who must initiate a suicide risk screening within one (1) hour from referral.

(7) The director of security or designee will review all admission decisions within one (1) working day to determine if admission criteria have been met. If the criteria are not met or policy and procedures are not followed, the youth will be released from the security unit. The director of security or designee shall not have been involved in the admission decision.

(8) A youth may appeal the admission decision to the security intake through the youth complaint system as defined in (GAP) §93.31 of this title (relating to Complaint Resolution System).

(e) Security Intake Termination/Other Segregation Programs.

(1) Within 24 hours of admission to security intake, a youth shall be:

(A) released to the general population; or

(B) admitted to one of the following programs:

(i) security program--if it is determined that there are reasonable grounds to believe one or more of the security program admission criteria is occurring. See (GAP) §97.40 of this title (relating to Security Program);

(ii) institution detention program--if it is determined that there are reasonable grounds to believe one or more of the institution detention admission criteria is occurring. See (GAP) §97.43 of this title (relating to Institution Detention Program).

(iii) protective custody--if it is determined by an MHP, following a face-to-face assessment, that protective custody admission criteria are occurring. See (GAP) §97.45 of this title.

(2) If a youth is admitted to security intake for any reason other than danger of injury to self, the youth may be released by the director of security or any designated staff authorized to admit youth in this policy.

(3) Youth admitted to security intake for danger of injury to self may only be released from security intake to the general population under two circumstances:

(A) by an MHP in accordance with (GAP) §91.88 of this title; or

(B) if an MHP does not assess the youth within 24 hours of admission to intake. The superintendent or assistant superintendent will be contacted immediately and the youth will be returned to the general population under one-to-one (1:1) observation until an MHP conducts a face-to-face suicide risk assessment.

(f) Restrictions.

(1) Segregation shall not be used for retribution at any time.

(2) No minimum length of time in security intake shall be imposed.

(3) The superintendent or assistant superintendent may place moratoriums on self-referrals to security intake for individual dormitories (such as during dorm shutdown), as well as campus-wide when appropriate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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37 TAC §97.40

The Texas Youth Commission (TYC) adopts an amendment to §97.40, concerning Security Program, without changes to the proposed text as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3487) and will not be republished.

The justification for amending the section is to provide for the safety of youth and staff at TYC institutions.

The amendment will establish that this rule does not apply to youth who are in the security unit due to danger of injury to self.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to take appropriate measures to ensure the safety of a youth.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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37 TAC §97.43

The Texas Youth Commission (TYC) adopts an amendment to §97.43, concerning Institution Detention Program, with changes to the proposed text as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3487). Changes to the proposed text consist of updating a reference to another rule number, as well as minor grammatical corrections.

The justification for amending the section is to provide for the safety of youth and staff at TYC institutions.

The amendment will establish that this rule does not apply to youth who are in the security unit due to danger of injury to self.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to take appropriate measures to ensure the safety of a youth

The adopted rule implements the Human Resource Code, §61.034.

§97.43. Institution Detention Program.

(a) Purpose. The purpose of this rule is to establish criteria and procedures for detaining appropriate Texas Youth Commission (TYC) youth in an Institution Detention Program (IDP) operated within each TYC institution or secure contract program, who have charges against them pending or filed, or are awaiting a due process hearing or trial, or awaiting transportation subsequent to a due process hearing or trial.

(b) Applicability.

(1) This rule applies to TYC youth detained in TYC operated institutions or secure contract programs for pre-hearing or post-hearing pending transportation.

(2) This rule does not apply to:

(A) TYC youth detained in community detention facilities. See (GAP) §97.41 of this title (relating to Community Detention);

(B) the use of the same or adjacent space when used specifically as security intake. See (GAP) §97.37 of this title (relating to Security Intake);

(C) the use of the same or adjacent space when used specifically as a security program. See (GAP) §97.40 of this title (relating to Security Program);

(D) the use of the same or adjacent space when used specifically as disciplinary segregation. See (GAP) §95.17 of this title (relating to Behavior Management Program);

(E) the use of the same or adjacent space when used specifically as protective custody. See (GAP) §97.45 of this title (relating to Protective Custody);

(F) the use of the same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation); and

(G) the aggression management program (AMP). See (GAP) §95.21 of this title (relating to Aggression Management Program).

(c) Explanation of Terms Used. Detention Review Hearing - the TYC level IV hearing required by this policy.

(d) Criteria for Placement in an Institution Detention Program.

(1) Designated staff will conduct a review to determine whether admission criteria have been met.

(2) Admission Criteria for Detention Up To 72 Hours.

(A) A youth assigned to a TYC-operated institution or secure contract program may be admitted to the IDP program (for up to 72 hours):

(i) if the youth is awaiting transportation subsequent to a due process hearing or trial; or

(ii) if a due process hearing or trial has been requested in writing or charges are pending or have been filed; and

(iii) there are reasonable grounds to believe the youth has committed a violation; and

(iv) one of the following applies:

(I) suitable alternative placement within the facility is unavailable due to on-going behavior of the youth that creates disruption of the routine of the youth's current program; or

(II) the youth is likely to interfere with the hearing or trial process; or

(III) the youth represents a danger to others; or

(IV) the youth has escaped or attempted escape as defined in (GAP) §97.29 of this title (relating to Escape/Abscondence and Apprehension).

(B) A youth who is assigned to a placement other than a TYC operated institution or secure contract program may be detained in a TYC operated IDP (up to 72 hours):

(i) if a due process hearing or trial has been requested in writing; and

(ii) based on current behavior or circumstances and all detention criteria must have been met as defined in (GAP) §97.41 of this title (relating to Community Detention).

(C) A youth may appeal the admission decision to the IDP through the youth complaint system as defined in (GAP) §93.31 of this title (relating to Complaint Resolution System).

(3) Admission Criteria for Detention Beyond 72 Hours.

(A) A youth who is assigned to a TYC-operated institution or secure contract program may be detained in the IDP beyond 72 hours based on current behavior or circumstances, and all other criteria in paragraph (2) of this subsection have been met.

(B) A youth who is assigned to a placement other than a TYC-operated institution or secure contract program may be detained in a TYC-operated IDP beyond 72 hours based on current behavior or circumstances and all detention criteria in (GAP) §97.41 of this title (relating to Community Detention) have been met.

(4) A hearing will be scheduled as soon as practical but no later than seven (7) days, excluding weekends and holidays, from the date of the alleged violation.

(A) A due process hearing or trial is considered to be scheduled if a due process hearing date and time has been set or trial is pending.

(B) A youth whose due process hearing or trial has been held may be detained without a level IV hearing when the youth is waiting for transportation:

(i) to the Texas Department of Criminal Justice Institution Division (TDCJ-ID) following a transfer hearing; or

(ii) to a different placement following a level I or II hearing.

(C) Transportation should be arranged immediately to take place within 72 hours and anything past that must have superintendent's approval.

(e) Detention Hearings Required for Any Youth Held in an Institution Detention Program.

(1) A youth, who meets admission criteria, may be detained in an IDP for up to 72 hours.

(2) For extensions beyond 72 hours, an initial detention review hearing (level IV hearing) must be held on or before 72 hours from admission to the IDP, or the next working day.

(3) Subsequent detention review hearings must be held within ten (10) working days from the previous detention review hearing when a due process hearing or trial is not held and continued detention is necessary and appropriate based upon current behavior or circumstances that meet criteria. See (GAP) §95.59 of this title (relating to Level IV Hearing Procedure).

(4) A detention review hearing is not required for:

(A) youth under indictment pending trial pursuant to (GAP) §95.5 of this title (relating to Referral to Criminal Court);

(B) youth detained pending transportation as defined in this policy; or

(C) sentenced offenders awaiting a transfer hearing to TDCJ-ID as defined in (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders), if the hearing date is set to take place within a reasonable period of time from the date of detention.

(5) Institution or a designated community staff will hold the required level IV detention review hearings. The primary service worker (PSW) for youth not assigned to an institution will coordinate with institution staff to ensure that hearings are timely held or waived properly.

(6) If a level IV hearing is not timely held or is not properly waived, the youth shall be released from the IDP.

(7) The youth is notified in writing of his/her right to appeal the level IV hearing.

(f) Release from institution detention is determined by the outcome of a hearing or trial or upon the decision not to hold a hearing. If the youth is pending transportation, the youth is released from detention upon transport.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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37 TAC §97.45

The Texas Youth Commission (TYC) adopts new §97.45, concerning Protective Custody, with changes to the proposed text

as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3244). Changes to the proposed text consist of minor grammatical corrections.

The justification for the new rule is the protection, monitoring, and treatment of potentially suicidal youth.

The new rule will create a segregation program in secure TYC facilities and contract programs in order for potentially suicidal youth to be temporarily removed from the general population. The new rule will further establish a schedule for clinical assessments and monitoring of such youth by a mental health professional, along with establishing requirements for re-integrating youth back into the general population.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to establish rules appropriate to welfare and rehabilitation of youth in its care.

The adopted rule implements the Human Resource Code, §61.034.

§97.45. Protective Custody.

(a) Purpose. The purpose of this rule is to provide for a protective custody program in Texas Youth Commission (TYC) institutions and secure contract programs for the placement of youth who are determined to be at risk of serious harm to themselves and to establish program operation requirements.

(b) Applicability.

(1) This rule does not apply to:

(A) the use of the same or adjacent space when used specifically as security intake. See (GAP) §97.37 of this title (relating to Security Intake);

(B) the use of the same or adjacent space when used specifically as detention in a TYC institution. See (GAP) §97.43 of this title (relating to Institution Detention Program);

(C) the use of the same or adjacent space when used specifically as disciplinary segregation. See (GAP) §95.17 of this title (relating to Behavior Management Program);

(D) the use of the same or adjacent space when used specifically as a security program. See (GAP) §97.40 of this title (relating to Security Program);

(E) the use of the same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation);

(F) the aggression management program (AMP). See (GAP) §95.21 of this title (relating to Aggression Management Program).

(2) When a youth is admitted to protective custody, this policy must be read in conjunction with (GAP) §91.87 of this title (relating to Suicide Alert Explanation of Terms) and (GAP) §91.88 of this title (relating to Suicide Alert for Secure Programs).

(c) Admission Criteria. A youth may be admitted to the protective custody program only if the youth has received a face-to-face assessment by a mental health professional (MHP), and the MHP has determined that:

(1) based on the youth's actions, statements, or mental status, the youth is a serious and immediate physical danger to himself/herself; and

(2) confinement in the security unit is necessary to protect the youth from self-harm, and there is no less restrictive setting that provides the necessary level of security and staff supervision.

(d) Admission and Release Process.

(1) Based upon the MHP's assessment that admission criteria are met, the youth will be admitted into protective custody for up to 24 hours.

(2) All admissions to protective custody are reviewed within one (1) working day to determine if policy and procedures have been followed.

(3) The youth may be released from protective custody only if:

(A) an MHP determines the youth may return to the regular program immediately following a face-to-face suicide risk assessment; and

(B) the MHP has consulted with the designated mental health professional (DMHP), as defined in (GAP) §91.87 of this title (relating to Suicide Alert Explanation of Terms), prior to releasing the youth from protective custody; or

(C) a review of the admission to protective custody reveals that the youth is being held in violation of policy.

(e) Extended Stay Requirements.

(1) A youth may not be held in protective custody beyond 24 hours from admission to the program unless an MHP conducts a second face-to face suicide risk assessment and the MHP determines that the youth continues to be a serious and immediate physical danger to himself/herself and continued confinement is necessary to prevent self-harm.

(2) The youth may continue to be held in protective custody with a face-to-face suicide risk assessment completed every 24 hours after initial placement to evaluate the youth's status and need for continued placement.

(3) Each 24-hour extension decision will be reviewed within one (1) working day to determine if policy and procedures were followed.

(4) Every seven (7) days following a youth's admission into protective custody, the TYC facility's DMHP shall review the documentation relating to protective custody including the youth's treatment plan.

(5) If the youth remains in protective custody beyond 14 days, the director of treatment and case management shall review the MHP's evaluations and the youth's treatment plan shall be reviewed at least every three (3) days thereafter. Assessments will continue to be completed by the MHP every 24 hours.

(f) Appeals. The youth has the right to appeal his/her placement through the youth complaint system at any point in this process.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Robinson
Executive Director
Texas Youth Commission
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Texas Department of Human Services (DHS) adopts amendments to §§97.2, 97.247, 97.298, 97.403, 97.404, 97.602, and 97.701 in its Licensing Standards for Home and Community Support Services Agencies (HCSSA) chapter without changes to the proposed text published in the May 9, 2003, issue of the *Texas Register* (28 TexReg 3816).

Justification for the amendments is to provide greater efficiency to HCSSAs by allowing branch offices and alternate delivery sites to conduct criminal history and registry checks on applicants and current employees, to comply with recently adopted Texas Board of Nurse Examiners rules, and to update citations.

DHS received no comments regarding adoption of the amendments.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §97.2

The amendment is adopted under the Health and Safety Code, Chapter 142, which provides DHS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendment implements the Health and Safety Code, §§142.001 - 142.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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Proposal publication date: May 9, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

DIVISION 3. AGENCY ADMINISTRATION

40 TAC §97.247

The amendment is adopted under the Health and Safety Code, Chapter 142, which provides DHS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendment implements the Health and Safety Code, §§142.001 - 142.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Proposal publication date: May 9, 2003
For further information, please call: (512) 438-3734

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DIVISION 4. PROVISION AND COORDINATION OF TREATMENT AND SERVICES

40 TAC §97.298

The amendment is adopted under the Health and Safety Code, Chapter 142, which provides DHS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendment implements the Health and Safety Code, §§142.001 - 142.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2003.

TRD-200303454
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: June 29, 2003
Proposal publication date: May 9, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER D. ADDITIONAL STANDARDS SPECIFIC TO LICENSE CATEGORY AND SPECIFIC TO SPECIAL SERVICES

40 TAC §97.403, §97.404

The amendments are adopted under the Health and Safety Code, Chapter 142, which provides DHS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendments implement the Health and Safety Code, §§142.001 - 142.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2003.

TRD-200303455
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: June 29, 2003
Proposal publication date: May 9, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER F. ENFORCEMENT

40 TAC §97.602

The amendment is adopted under the Health and Safety Code, Chapter 142, which provides DHS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendment implements the Health and Safety Code, §§142.001 - 142.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2003.

TRD-200303456
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: June 29, 2003
Proposal publication date: May 9, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER G. HOME HEALTH AIDES

40 TAC §97.701

The amendment is adopted under the Health and Safety Code, Chapter 142, which provides DHS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendment implements the Health and Safety Code, §§142.001 - 142.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2003.

TRD-200303457
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: June 29, 2003
Proposal publication date: May 9, 2003
For further information, please call: (512) 438-3734

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PART 2. TEXAS REHABILITATION COMMISSION

CHAPTER 106. PURCHASE OF GOODS AND SERVICES BY TEXAS REHABILITATION COMMISSION

SUBCHAPTER D. PURCHASE OF GOODS AND SERVICES

40 TAC §106.107

The Texas Rehabilitation Commission (TRC) adopts a change to Title 40, Chapter 106, §106.107, concerning purchase of goods and services by TRC, without changes to the proposed text as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3708) and will not be republished. The change is being adopted to update the schedule of rates the Commission will pay for medical services for 2003 - 2004.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2003.

TRD-200303520
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Effective date: July 1, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 424-4050

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendments of the Texas Automobile Rules and Rating Manual (the Manual), Rule 141, Rental Car Companies. Staff's petition (Ref. No. A-0603-13-I), was filed on June 13, 2003.

Staff proposes amending Manual Rule 141 to remove the requirement that an employee of a rental car company or its franchisee verbally inform a prospective renter that he or she may already have an insurance policy that duplicates the coverage that would be provided by the policy (automobile rental liability insurance) offered by the rental car company. Staff also proposes to eliminate the requirement that such an employee verbally inform the prospective renter that the purchase of automobile rental liability insurance is not required as a condition of renting an automobile. The rule's requirements for written disclosures would not be changed, and Staff's proposal would eliminate only the verbal disclosure requirements.

Former Insurance Code Article 21.07, Section 21(i) required a rental car company or franchisee licensed pursuant to that section to conduct a training program to be submitted to the Commissioner of Insurance for approval, and the program was required to meet certain minimum standards. One standard was that the trainee would be "instructed to acknowledge to a prospective renter" that the renter may have insurance policies that already provide the coverage being offered by the rental car company. The statute also provided that the trainee would be instructed "to acknowledge" that the purchase of automobile rental liability insurance is not required for renting a vehicle.

Former Insurance Code Article 21.07, Section 21(g)(2) set forth requirements for written disclosures at every rental car location. Those requirements included similar wording to that previously mentioned in Section 21(i), as well as numerous other provisions. Manual Rule 141, adopted effective May 30, 1998 by Commissioner's Order No. 98-0513, currently requires verbal disclosure and written disclosure to a prospective customer that automobile rental liability insurance may duplicate existing coverage, and that it is not required for the rental transaction.

Former Insurance Code Article 21.07, Section 21 was repealed effective September 1, 1999, and it was in essence replaced by Insurance Code Article 21.09, effective on that same date. Article 21.09, Section 1(d), contains some provisions similar to former Article 21.07, Section 21(i), such as the standard that "each trainee must be instructed to inform a prospective customer that ...the purchase of insurance specified in this article is not required in order to complete the associated consumer transaction...." However, there is no longer a statutory requirement for disclosure regarding duplicate coverage, other than in Article 21.09(g), which specifically pertains to written disclosures only.

Staff believes that Insurance Code Article 21.09, Section 1(d) may be interpreted as not mandating verbal disclosure that the purchase of automobile rental liability insurance is optional in the rental transaction, provided that disclosure is made in writing, as required by Article 21.09, Section 1(g). That interpretation is possible because the requirement "to inform" in Article 21.09, Section 1(d)(2) may be construed to be satisfied by disclosure in writing.

Certain rental car companies on January 13, 2003 filed a petition with the Department (Ref. No. A-0103-02), asserting that the verbal disclosure requirements of Manual 141 "do not have any consumer benefit," that they "unnecessarily delay the rental transaction," and that they create problems with consistency. The petition also asserts that no other state requires both verbal and written disclosures of this nature, and that the other states require only written disclosures. Considering the foregoing factors, staff recommends deleting the verbal disclosure requirements from Manual Rule 141.

A copy of the petition, with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-0603-13-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on July 28, 2003 to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P.O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period defined above.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200303709
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 16, 2003

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review §291.35, concerning Triplicate Prescription Requirements, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

In conjunction with this review, the agency is proposing amendments to §291.35 that are published elsewhere in this issue of the *Texas Register*.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Gay Dodson, R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 1, 2003.

TRD-200303517
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: June 11, 2003

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The Texas State Board of Pharmacy files this notice of intent to review §§291.101 - 291.105, concerning Class E (Non-Resident) Pharmacies, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rules continue to exist, may be submitted to Gay Dodson, R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 1, 2003.

TRD-200303519
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: June 11, 2003

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The Texas State Board of Pharmacy files this notice of intent to review §§295.1 - 295.9, concerning Change of Address and/or Name, Change of Employment, Responsibility of Pharmacist, Sharing Money Received for Prescription, Pharmacist License or Renewal Fees, Licensure Fee, Pharmacist License Renewal, Continuing Education Requirements, and Inactive License, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rules continue to exist, may be submitted to Gay Dodson, R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 1, 2003.

TRD-200303518
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: June 11, 2003

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Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas files this notice of intention to review and readopt 16 TAC Chapter 1, relating to Practice and Procedure. This review and consideration is being conducted in accordance with Texas Government Code, §2001.039.

The agency's reasons for adopting these rules continue to exist; however, the Commission recognizes that some of the provisions in Chapter 1 need to be revised and updated. Therefore, along with the review, the Commission asks current practitioners, consultants, and other interested persons who do business with the Commission, or who are interested in Commission proceedings or administrative proceedings generally, for comments and suggestions regarding possible changes to Chapter 1. The Commission will consider the suggestions and may propose amendments to this chapter in a future rulemaking.

Suggestions about revisions to Chapter 1 and/or comments on the proposed review of Chapter 1 may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept suggestions and comments for 30 days after publication of this notice in the *Texas Register*. For further information, call Mary "Polly" Ross McDonald at (512) 463-7008. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas, on June 10, 2003.

TRD-200303550

Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Filed: June 12, 2003

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The Railroad Commission of Texas ("Commission") files this notice of intent to review §§3.6, 3.12, 3.13, 3.16, 3.23, 3.27, 3.30, 3.31, 3.34, 3.41, 3.54, 3.55, 3.62, 3.65, 3.66, 3.67, 3.69, 3.72, 3.75, 3.77, 3.80, 3.93, 3.99, 3.100, and 3.102, relating to Application for Multiple Completion; Directional Survey Company Report; Casing, Cementing, Drilling, and Completion Requirements; Log and Completion or Plugging Report; Vacuum Pumps; Gas To Be Measured and Surface Commingling of Gas; Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Natural Resource Conservation Commission (TNRCC); Gas Reservoirs and Gas Well Allowable; Gas To Be Produced and Purchased Ratably; Application for New Oil or Gas Field Designation and/or Allowable; Gas Reports Required; Reports on Gas Wells Commingling Liquid Hydrocarbons before Metering; Cycling Plant Control and Reports; Pipeline Permits Required; Pipeline Tariffs; Obtaining Pipeline Connections; Definitions; Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle; Discharges to Waters of the State; Brine Mining Injection Wells; Commission Forms, Applications and Filing Requirements; Water Quality Certification Definitions; Cathodic Protection Wells; Seismic Holes and Core Holes; and Tax Reduction for Incremental Production.

As part of this review process but in a separate proposal, the Commission has proposed the amendment, repeal, and new sections for some of the rules being reviewed. That proposal has been filed simultaneously with this proposed review. With regard to §3.30, the Commission's section was adopted in conjunction with the former Texas Natural Resource Conservation Commission's (now the Texas Commission on Environmental Quality's) rule, 30 Texas Administrative Code, §7.117, relating to Memorandum of Understanding between the Railroad Commission of Texas and the Texas Natural Resource Conservation Commission. TNRCC adopted the review of its chapter 7 in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10772).

Comments on the proposed review may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register* and should refer to Oil and Gas Docket No. 20- 0235283. For further information, call Leslie Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas, on June 10, 2003.

TRD-200303551
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Filed: June 12, 2003

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The Railroad Commission of Texas files this notice of intent to review §7.45, relating to Quality of Service. This review is being conducted in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting this rule continue to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline, because there is no guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Mary ("Polly") Ross McDonald at (512) 463-7008. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas, on June 10, 2003.

TRD-200303552
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Filed: June 12, 2003

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The Railroad Commission of Texas files this notice of intent to review §§7.70-7.74, and §§7.80-7.87, relating to the Commission's pipeline safety regulations. This review is being conducted in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting the rules continue to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline, because there is no guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Mary ("Polly") Ross McDonald at (512) 463-7008. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas, on June 10, 2003.

TRD-200303553
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Filed: June 12, 2003

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The Railroad Commission of Texas ("Commission") files this notice of intention to review and readopt §§9.2, 9.9, and 9.51 - 9.54, relating to Definitions; Requirements for Certificate Renewal; General Requirements for Training and Continuing Education; Training and Continuing Education Courses; Continuing Education Credit for Previous Courses; and Commission- Approved Outside Instructors. As part of this review process but in a separate proposal, the Commission has proposed some amendments to these sections, the main purpose of which is to update the training and continuing education courses offered by the Commission. The Commission's reasons for adopting these rules, as proposed to be amended, continues to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail

to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Thomas Petru at (512) 463-6930. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas, on June 10, 2003.

TRD-200303555
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Filed: June 12, 2003

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The Railroad Commission of Texas (Commission) files this notice of intent to review Chapter 20, relating to Administration. The review is being conducted in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist.

Comments on the proposed review may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline, because there is no guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Mary ("Polly") Ross McDonald at (512) 463-7008. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas on June 10, 2003.

TRD-200303554
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Filed: June 12, 2003

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Texas Workers' Compensation Commission

Title 28, Part 2

Notice of Intention to Review

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 112 concerning Scope Of Liability For Compensation. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

112.101 Agreement Regarding Workers' Compensation Insurance Coverage Between General Contractors and Subcontractors.

112.102 Agreements between Motor Carriers and Owner Operators.

112.200 Definition of Residential Structures.

112.201 Agreement To Establish Employer-Employee Relationship for Certain Building and Construction Workers.

112.202 Joint Agreement To Affirm Independent Relationship for Certain Building and Construction Workers.

112.203 Exception to Application of Agreement To Affirm Independent Relationship for Certain Building and Construction Workers.

112.301 Labor Agent's Notification of Coverage.

112.401 Election of Coverage by Certain Professional Athletes.

112.402 Determination of Equivalent Benefits for Professional Athletes.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt these rules. Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 28, 2003 and submitted to Nell Cheslock, Legal Services, Office of General Counsel, MS 4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

TRD-200303751
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: June 18, 2003

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Notice of Intention to Review

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 134 concerning Benefits-Guidelines for Medical Services, Charges, and Payments. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature. SUBCHAPTER A - Medical Policies §134.1 Use of the Fee Guidelines §134.5 Treating Doctor Attendance at Medical Examination under a Medical Examination Order §134.6 Travel Expenses Incurred by the Injured Employee SUBCHAPTER C - Medical Fee Guidelines §134.201 Medical Fee Guideline for Medical Treatments and Services Provided under the Texas Workers' Compensation Act §134.202 Medical Fee Guideline §134.302 Dental Fee Guideline SUBCHAPTER E- -Health Facility Fees §134.401 Acute Care Inpatient Hospital Fee Guideline SUBCHAPTER F - Pharmaceutical Benefits §134.500 Definitions §134.501 Initial Pharmaceutical Coverage §134.502 Pharmaceutical Services §134.503 Reimbursement Methodology §134.504 Pharmaceutical Expenses Incurred by the Injured Employee §134.506 Outpatient Drug Formulary SUBCHAPTER G - Prospective And Concurrent Review Of Health Care §134.600 Preauthorization, Concurrent Review, and Voluntary Certification of Health Care SUBCHAPTER I - Provider Billing Procedures §134.800 Required Billing Forms and Information §134.801 Submitting Medical Bills for Payment §134.802 Insurance Carrier's Submission of Medical Bills to the Commission SUBCHAPTER J - Reviews And Audits §134.900 Medical Benefit Review and Audit

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt these rules. Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 24, 2003 and submitted to Nell Cheslock, Legal Services, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

TRD-200303605

Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: June 13, 2003

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Adopted Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) adopts the review of Chapter 253, concerning Practice and Procedure, Resolution Process and Procedural Rules. The proposed review was published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3741). This review was conducted in accordance with Government Code, Section 2001.039.

Sections 253.1-253.30, which address billing and collection procedures and the processing of contested cases are no longer applicable to the CSEC. The responsibility for billing and collection was transferred from the CSEC to the Comptroller's Office during the 77th Legislative session. Therefore, there is no need for CSEC to continue those sections.

Section 253.31, Petitions for Rulemaking Before the Commission, continues to be applicable to CSEC and is being re-adopted as new §253.1. The adoption to the repeals and new section is being published elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of this review.

This concludes the review of Chapter 253. §253.1. Intent, Scope, and Construction of Rules. §253.2. Definition of Terms. §253.3. Informal Collection Procedures by the Commission. §253.4. Jurisdiction. §253.5. Powers and Duties of the Administrative Law Judge. §253.6. Substitution of Administrative Law Judge. §253.7. Appearance of Parties at Hearings; Representation. §253.8. Filings. §253.9. Discovery. §253.10. Prehearing Conferences. §253.11. Orders. §253.12. Settlement Conferences. §253.13. Stipulations. §253.14. Form of Pleadings. §253.15. Motions. §253.16. Waiver of Right To Appear. §253.17. Conduct of Hearings. §253.18. Telephone Hearings. §253.19. Evidence. §253.20. The Record. §253.21. Proposal for Decision. §253.22. Filing of Exceptions and Replies. §253.23. Commission's Orders. §253.24. Rehearing. §253.25. Judicial Review. §253.26. Administrative Finality. §253.27. Effective Date of Order. §253.28. Emergency Order. §253.29. Show Cause Orders and Complaints. §253.30. Appeals. §253.31. Petitions for Rulemaking before the Commission.

TRD-200303680
Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: June 16, 2003

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Texas Health Care Information Council

Title 25, Part 16

The Texas Health Care Information Council (Council) files this notice of adopted review to Chapter 1301, Subchapter A, §§1301.11-1301.20, concerning Collection and Release of Hospital Discharge Data. The proposed review was published in the February 21, 2003, issue of the *Texas Register* (28 TexReg 1663). The Council also proposed amendments to §§1301.11, 1301.12, 1301.14, 1301.15, 1301.16, 1301.17, 1301.18, and 1301.19 which were published in March 21, 2003 issue of the *Texas Register* (28 TexReg 2451) relating to the change in billing claim format as required by the Public Law 104-191, Health Insurance Portability and Accountability Act of 1996 (HIPAA), and providing access to more Public Use Data elements regarding external causes of injury, charges, service utilization, and to clarify language. These sections are being adopted with changes to §1301.19 elsewhere in this issue of the *Texas Register.*

The adopted review is being conducted in accordance with the requirements of Texas Government Code, §2001.039, added by Acts 1999, 76th Legislature, chapter 1499, §1.11(a).

The Council has reviewed the rules in Subchapter A and determined that the reasons for their initial adoption continue to exist

This concludes the review of Chapter 1301, Subchapter A. 25 TAC §1301.11. Definitions. 25 TAC §1301.12 Collection of Hospital Discharge Data. 25 TAC §1301.13 Schedule for Filing Discharge Reports. 25 TAC §1301.14 Instructions for Filing Discharge Reports. 25 TAC §1301.15 Exemptions from Filing Requirements. 25 TAC §1301.16. Acceptance of Discharge Reports and Correction of Errors. 25 TAC §1301.17. Certification of Discharge Reports. 25 TAC §1301.18. Hospital Discharge Data Release. 25 TAC §1301.19. Discharge Reports--Records, Data Fields and Codes. 25 TAC §1301.20. Scientific Review Panel.

TRD-200303674
Jim Loyd
Executive Director
Texas Health Care Information Council
Filed: June 16, 2003

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Texas Health Care Information Council

Title 25, Part 16

Texas Health Care Information Council (Council) adopts the review of Title 25, Part 16, Chapter 1301, Subchapter B (§§ 1301.31-1301.35), concerning the collection and reporting of health plan employer data and information set (HEDIS) from health maintenance organizations (HMOs), pursuant to Government Code, § 2001.039. Notice of the proposed review was published in the July 20, 2001 issue of the *Texas Register* (26 TexReg 5450). The Council readopts the sections without amendment.

The Council received comments from United HealthCare of Texas. Commenter requested a revision of § 1301.323b, contending that the requirement of reporting by service area division, as defined in § 1301.32 (10) is financially burdensome, costing $87,000 to $104,000 per service area division. Commenter asserts that the Texas Department of Insurance recognizes commenter as a single entity for quality oversight audit purposes and that premium rates are based on experience (not community) ratings. Comments along the same lines were also received from BlueCross BlueShield of Texas and FIRSTCARE Southwest Texas Health Alliance, but were outside of the comment time period.

The Council agrees that reporting of HEDIS data as required under § 1301.323b is costly. HMOs are required by Health and Safety Code, § 108.009(o), however, to report data by service area. The Council has determined that consumer stakeholders continue to want market-based quality data as defined in 28 TAC, Part 1, Chapter 11 Subchapter A §7.65. Further, reporting in accordance with Texas Department of Insurance requirements for the reporting of financial, enrollment, and utilization data provides consistency and clarity in the State's reporting requirements of HMOs.

The Council has reviewed the rules in Subchapter B and determined that the reasons for their initial adoption continue to exist because the annual reporting of HEDIS data by HMOs is required by Health and Safety Code, § 108.009(o).

This concludes the review of Chapter 1301, Subchapter B. 25 TAC 1301.31. Purpose. 25 TAC 1301.32. Definitions. 25 TAC1301.33. Collection and Reporting of Health Plan Employer Data and Information Set (HEDIS) Data by Health Maintenance Organizations (HMOs). 25 TAC 1301.34. Verification of Data. 25 TAC 1301.35. Civil Penalty.

TRD-200303675
Jim Loyd
Executive Director
Texas Health Care Information Council
Filed: June 16, 2003

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On-Site Wastewater Treatment Research Council

Title 31, Part 9

The Texas On-Site Wastewater Treatment Research Council (council) adopts the rules review and readopts 31 TAC Chapter 286, On-Site Wastewater Treatment Research Council, without changes, in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking. The notice of intention to review was published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2363).

CHAPTER SUMMARY

Chapter 286 provides for the organization, administration, and general procedures and policies concerning the council's operation. The rules define the organization and administration of the council. The primary purpose of the council is to award competitive grants to enhance the development of on-site wastewater treatment systems through research and technology transfer. These rules provide the criteria for submission of proposals and selection of the grants. The rules also provide the procedures for accepting grants and donations to the council.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The council conducted a review and determined that the reasons for the rules in Chapter 286 continue to exist. The rules are necessary to implement the requirements in Texas Health and Safety Code, Chapter 367, and for the operation of the council. The council currently has five active grant projects and has three grant proposals being considered. Therefore, the rules are necessary to define the grant process.

PUBLIC COMMENT

The public comment period closed on April 14, 2003. No comments were received.

TRD-200303722
Warren Samuelson
Executive Secretary
On-Site Wastewater Treatment Research Council
Filed: June 17, 2003

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §10.13

Acreage Inspection Fees for Certification

Table 1

	All Classes
Agrotricum	$ .62 [~~.52~~]
Alfalfa	1.25 [~~1.04~~]
Buckwheat	.62 [~~.52~~]
Cantaloupe	6.24
Clover (all kinds)	1.25 [~~1.04~~]
Corn	3.90 [~~3.25~~]
Cotton	.50 [~~.24~~]
Cowpea, field bean, flat pea, and partridge pea	1.25 [~~1.04~~]
Flax and rape	1.56 [~~1.30~~]
Forest tree seed	6.24 [~~5.20~~]
Forest tree seedlings	50.00 [~~42.00~~]
Grass (seeded)	4.99 [~~4.16~~]
Grass (vegetatively propagated) (preplant is same)	12.00 [~~10.00~~]
Guar	.50 [~~.25~~]
Illinois bundleflower, and englemanndaisy	3.90 [~~3.25~~]
Millet (foxtail and pearl)	1.25 [~~1.04~~]
Millet (gahi and hybrids)	3.38 [~~2.73~~]
Okra and pepper	3.90 [~~3.25~~]
Peanut	.94 [~~.78~~]
Rice	3.90 [~~3.25~~]

Small grain .....62 [.52]

Sorghum (open-pollinated) .....1.09 [.91]

Sorghum (commercial hybrids).....3.28 [2.73]

Sorghum (A, B, & R Lines) .....9.36 [7.80]

Soybean and mungbean .....72 [.60]

Sugarcane.....6.24 [5.20]

Sunflower (commercial hybrids) .....3.12 [2.60]

Sunflower (A & R Lines) .....9.36 [7.80]

Sunflower (open-pollinated),

bushsunflower, maximilian.....3.12 [2.60]

Watermelon.....6.78 [5.72]

Other kinds not listed.....6.00

$25 [$20] application fee for EACH production field applied on for certification and preplant inspection

Late fee: $25 [$20] per field

Reinspection fee: Not less than $25 [$20] per field

Interagency certification: $100 [$75] per lot

Figure: 4 TAC §15.4(a)

Class	Average Weekly Volume Per Plant	Fee
1	One case or more, but less than 10 cases	$20 [~~$15~~]
2	10 cases or more, but less than 50 cases	$40 [~~$30~~]
3	50 cases or more, but less than 100 cases	$60 [~~$45~~]
4	100 cases or more, but less than 200 cases	$100 [~~$75~~]
5	200 cases or more, but less than 500 cases	$180 [~~$150~~]
6	500 cases or more, but less than 1,000 cases	$270 [~~$225~~]
7	1,000 cases or more, but less than 1,500 cases	$360 [~~$300~~]
8	1,500 cases or more, but less than 3,000 cases	$720 [~~$600~~]
9	3,000 cases or more, but less than 4,500 cases	$900 [~~$750~~]
10	4,500 cases or more, but less than 7,000 cases	$1,200 [~~$1,000~~]
11	7,000 cases or more, but less than 10,000 cases	$1,800 [~~$1,500~~]
12	10,000 cases or more	$2,400 [~~$2,000~~]

Figure: 4 TAC §15.4(b)

Class	Average Weekly Volume Per Plant	Fee
1	Less than 250 cases per week	$60 [~~$45~~]
2	250 cases or more, but less than 600 cases	$120 [~~$100~~]
3	600 cases or more, but less than 1,500 cases	$210 [~~$175~~]
4	1,500 cases or more	$420 [~~$350~~]

Figure: 16 TAC Chapter 9--Preamble

No Overnight Costs

$18 (instructor's hourly wage) x 4 hours travel time (round trip)		$ 72
$18 (instructor's hourly wage) x 8 hour class time		$144
Printed materials/supplies		$ 16
Vehicle fuel and related expenses		$ 18

	Total	$250

Overnight Stay Required

$18 (instructor's hourly wage) x 11 hours travel time (round trip)		$198
$18 (instructor's hourly wage) x 8 hours class time	$144	
Per diem (hotel for one night/meals for two days)	$105	
Printed materials/supplies	$ 16	
Vehicle fuel and related expenses	$ 37	

Total	$500	

Figure: 16 TAC §9.52(g)

LP-GAS MANAGEMENT-LEVEL TRAINING AND CONTINUING EDUCATION COURSES (September 2003)
Table One

Course Number	Course Hours	AFT	Course Title	Category D Mgmt.	Category E Mgmt.	Category F Mgmt.	Category G Mgmt.	Category I Mgmt.	Category J Mgmt.	Category K Mgmt.
1.1	8		Introduction to Propane	x	x	x	x	x	x	x
2.1	8	x	Operating a Dispenser		x	x	x	x	x	
2.2/2.4	8	x	Inspecting, Requalifying, Filling and Transporting DOT Cylinders; and Evacuating, Transporting, Maintaining, and Refitting ASME Tanks		x	x	x	x	x	
2.3	8	x	Driving/Operating a Cargo Tank Motor Vehicle		x					
3.1	8		Residential Propane System Layout and Design	x	x					x
3.2	8		Residential Propane System Installation	x	x					
3.5	8		Identifying the Functions and Operation Characteristics of Controls	x	x					
3.7	8		Electrical Troubleshooting and Repairing Residential Gas Appliances	x	x					
3.11	8		Residential Propane System Inspection	x	x					
6.1	8		Regulatory Compliance		x					
80	80		Category E Management-Level Course	x	x	x	x	x	x	x
16	16		Category F, G, and I Management-Level Course		x	x	x	x	x	

LP-GAS EMPLOYEE-LEVEL TRAINING AND CONTINUING EDUCATION COURSES (September 2003)
Table Two

Course Number	Course Hours	AFT	Course Title	Portable Cylinder Filling	Motor & Mobile Fuel	Bobtail [1]	Delivery Truck/Service & Installation[2]	Service & Installation	Appliance Service & Installation
1.1	8		Introduction to Propane	x	x	x	x	x	x
2.1	8	x	Operating a Dispenser	x	x	x	x		
2.2/2.4	8	x	Inspecting, Requalifying, Filling and Transporting DOT Cylinders; and Evacuating, Transporting, Maintaining, and Refitting ASME Tanks	x		x	x		
2.3	8	x	Driving/Operating a Cargo Tank Motor Vehicle	x		x	x		
3.1	8		Residential Propane System Layout and Design				x	x	x
3.2	8		Residential Propane System Installation				x	x	
3.5	8		Identifying the Functions and Operation Characteristics of Controls				x	x	x
3.7	8		Electrical Troubleshooting and Repairing Residential Gas Appliances				x	x	x
3.11	8		Residential Propane System Inspection				x	x	x
80	80		Category E Management-Level Course	x	x	x	x	x	x
16	16		Category F, G, and I Management-Level Course	x	x	x	x		

[1] A "Bobtail Driver" notation on a Railroad Commission LP-gas certification card indicates the individual is authorized only to operate a bobtail truck and perform minor service activities.

[2] A "Delivery Truck" notation on an LP-gas certification card indicates the individual is authorized to perform delivery truck and service and installation activities.

COURSES WHICH COUNT TOWARDS CONTINUING EDUCATION CREDIT FOR MANAGEMENT-LEVEL CERTIFICATE HOLDERS (September 2003)

Table Three

Course Number	Credit Hours[1]	AFT	Course Title	Category D Mgmt.	Category E Mgmt.	Category F Mgmt.	Category G Mgmt.	Category I Mgmt.	Category J Mgmt.	Category K Mgmt.
CETP 1	8		Basic Principles and Practices	x	x	x	x	x	x	x
CETP 2	8		Propane Delivery		x		x			
CETP 3	8		Plant Operations		x					
CETP 4	8		Distribution Systems Operations	x	x					
CETP 5	8		Transfer System Operations		x					
CETP 6	8		Appliance Installation	x	x					
CETP 7	8		Appliance Service	x	x					
CETP 8	8		Large Industrial/Commercial	x	x					x
PERC GAS Check	8		GAS Check	x	x					

[1] Credit hours may not equal the total number of course hours.

COURSES WHICH COUNT TOWARDS CONTINUING EDUCATION CREDIT
FOR EMPLOYEE-LEVEL APPLICANTS OR CERTIFICATE HOLDERS (September 2003)
Table Four

Course Number	Credit Hours[1]	AFT	Course Title	Portable Cylinder Filling	Motor & Mobile Fuel	Bobtail[2]	Delivery Truck/Service & Installation[3]	Service & Installation	Appliance Service & Installation
CETP 1	8		Basic Principles and Practices	x	x	x	x	x	x
CETP 2	8		Propane Delivery			x	x		
CETP 4	8		Distribution Systems Operations		x		x	x	
CETP 5	8		Transfer System Operations	x	x				
CETP 6	8		Appliance Installation				x	x	x
CETP 7	8		Appliance Service				x	x	x
CETP 8	8		Large Industrial/Commercial				x	x	
PERC Gas Check	8		GAS Check				x	x	x

Note: The CETP 3 course, Plant Operations, is not accepted by the Commission for continuing education credit.

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[1] Credit hours may not equal the total number of course hours.

[2] A "Bobtail Driver" notation on a Railroad Commission LP-gas certification card indicates the individual is authorized only to operate a bobtail truck and perform minor service activities.

[3] A "Delivery Truck" notation on an LP-gas certification card indicates the individual is authorized to perform delivery truck and service and installation activities.

Figure: 16 TAC §9.403(a)

Affected NFPA 58 Section	Specific Action	Commission rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
1.3	additional requirement	See Commission rule §9.114, Odorizing and Reports.
1.4.1	not adopted	See Commission rules §9.27, Application for an Exception to a Safety Rule, and §9.101, Filings Required for Stationary LP-Gas Installations.
1.4.2	not adopted	See Commission rules §9.101, Filings Required for Stationary LP-Gas Installations, and §9.102(c), Notice of Stationary LP-Gas Installations.
1.5	additional requirement	See Commission rules §§9.51, General Requirements for Training and Continuing Education, and 9.52, Training and Continuing Education Courses.
1.7.11	additional requirement	In addition to definition for "Authority Having Jurisdiction," see Commission rule §9.402(a), Clarification of Certain Terms Used in NFPA 58.
1.7.40	not adopted	The Commission does not adopt the definition of Low Emission Transfer.
2.2.1.4	additional requirement	See Commission rule §9.135, Unsafe or Unapproved Containers, Cylinders, or Piping.
2.2.2.2	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
2.2.6.1	additional requirement	See Commission rules §9.140 table 1, Uniform Protection Standards, and §9.141, Uniform Safety Requirements.
2.2.6.3	not adopted	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers.
2.2.6.4	with changes	A warning label shall be applied to all cylinders of 4.2 lb (1.9 kg) to 100 lb (45.4 kg) LP-Gas capacity or less and not filled on site. The label shall include information on the potential hazards of LP-Gas.
2.2.6.5	not adopted	See Commission rule §9.140 table, Uniform Protection Standards.
2.3.1.5	with changes	Cylinders with 4.2 lb (1.9 kg) ~~4 lb (1.8 kg)~~ through 40-lb (18-kg) propane capacity for vapor service shall comply with the following: (a) - (d) (No change.)

2.3.1.6	errata	~~Container appurtenances shall be maintained in operating condition.~~
2.3.2.3	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
2.3.3.2(a)(5)	with changes	Overfilling prevention devices shall be required on cylinders having 4.2 lb ~~4 lb~~ through 40 lb (1.9 ~~1.8~~ kg through 18 kg) propane capacity for vapor service. *(See 2.3.1.5.)*
Table 2.3.3.2(a)	with changes	Column 1 - Cylinders, 4.2-lb--100-lb (1.9-kg--45.4-kg) ~~2-lb to100-lb (0.9-kg to 45.4-kg)~~ Propane Capacity for Vapor Service Column 2 - Cylinders, 4.2-lb--100-lb (1.9-kg--45.4-kg) ~~2-lb to100-lb (0.9-kg to 45.4-kg)~~ Propane Capacity for Liquid Service Column 3 - Cylinders, 4.2-lb--100-lb (1.9-kg--45.4-kg) ~~2-lb to100-lb (0.9-kg to 45.4-kg)~~ Propane Capacity for Liquid and Vapor Service
2.3.3.2(b)(3) - 2.3.3.2(b)(4)	not adopted	See Commission rule §9.403(a), Exception 2.3.3.2(b)(2).
2.3.3.2(b)(1)	with changes	For ~~vapor withdrawal~~ all openings less than 1 ¼ inches in size, either of the following: a. A positive shutoff valve that is located as close to the container as practical in combination with an excess-flow valve installed in the container, or b. A ~~An~~ pneumatically operated internal valve with an integral excess-flow valve or excess-flow protection, or c. A double back flow check filler valve.

2.3.3.2(b)(2)	with changes	(2) For all ~~liquid withdrawal~~ openings 1 1/4 inches or greater in size, any of the following: a. A ~~An~~ pneumatically operated internal valve with excess flow protection equipped for remote closure and automatic shutoff using thermal (fire) actuation where the thermal element is located within 5 ft (1.5 m) of the internal valve ~~b. Internal valves installed in containers equipped for remote closure and automatic shutoff using thermal (fire) actuation as described in 2.3.3.2(b)(2)(a) by July 1, 2003~~ bc. Containers equipped with a positive shutoff valve that is located as close to the container as is practical in combination with an excess flow valve and retrofitted by February 1, 2006 ~~July 1, 2003~~, with one of the following: 1. A ~~An~~ pneumatically operated internal valve with excess flow protection equipped for remote closure and automatic shutoff using thermal (fire) actuation 2. A ~~An~~ pneumatically operated emergency shutoff valve equipped for remote closure and automatic shutoff using thermal (fire) actuation installed in the line downstream as close as practical to the existing positive shutoff valve. 3. A double back flow check filler valve 4. A positive shutoff valve in combination with a back flow check valve *Exception 1: Any vapor or liquid withdrawal opening 1 1/4 inch or larger with piping attached that exclusively provides service to stationary appliances or equipment. In lieu of an internal valve or emergency shutoff valve, this opening may be equipped with an excess flow valve and a shutoff valve installed as close as practical to the container.*
2.4.4	additional requirement	See Commission rule §9.311, Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
2.4.4.3	additional requirement	See Commission rule §9.312(b), Certification Requirements for Joining Methods.

2.4.6	additional requirement	See Commission rule §9.143(b) and (g), Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
2.4.6.3(b)	errata	(b) Hose assemblies, after the application of connections, shall have a design capability of not less than 700 psig (4.8 MPag). If a test is performed, such assemblies shall be leak tested at ~~120 percent of the~~ pressures between the operating pressure and 120 percent of the maximum working pressure {350 psig (24 MPag) minimum} of the hose.
2.5.1.3(a)	errata	Materials equivalent to 2.5.1.3(a)(1) through 2.5.1.3(a)(5) in melting point, corrosion resistance, toughness and strength.
2.6.2.1	additional requirement	See Commission rule §9.307, Identification of Converted Appliances.
3.2.2.1	with changes	LP-Gas containers shall be located outside of buildings. *Exception No. 1: (no change.)* *Exception No. 2: Containers from 1 gal (3.785 l) to ~~of less than~~ 125 gal (0.5 m^3) water capacity for the purposes of being filled in buildings or structures complying with Chapter 7.* [remainder: no changes]
3.2.2.2	additional requirement	In addition to Table 1, see Commission rule §9.142, LP-Gas Container Storage and Installation Requirements.
3.2.2.2	errata	Revise paragraph 3.2.2.2 Exception No. 4 to read: *Exception No. 4: The separation distances specified in Table 3.2.2.2 between containers and of buildings of other than wood-frame construction devoted exclusively to gas manufacturing and distribution operations shall be reduced to 10 ft (3m).*
3.2.2.2(g)	errata	Revise paragraph 3.2.2.2(g) Exception No. 2 to read: *Exception No. 2: Where the distance from a 2001 to 30,000 gal water capacity container to a building is in accordance with 3.11.2 and 3.11.4.*
Table 3.2.2.2 Note (a)	errata	Revise Table 3.2.2.2 Note (a) to read: See 3.2.2.2 Exception No. 3.

Table 3.2.2.2 Note (e)	errata	Revise Table 3.2.2.2 Note (e) to read: See 3.2.2.2(b), (c) and (e)
Table 3.2.2.2	errata	(a) Add a superscript "f" after 25 in the column Aboveground Containers (ft), (b) Add a new Note "f" to read: see 3.2.2.2 Exception No. 2.
3.2.2.3	additional requirement	See Commission rule §9.101(c)(2), Filings Required for Stationary LP-gas Installations.
3.2.2.8	additional requirement	See Commission rule §9.141(f), Uniform Safety Requirements.
3.2.3.1(c)	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.
3.2.4.2	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.4.4	additional requirement	See Commission rule §9.141(a), Uniform Safety Requirements.
3.2.5	with changes	Cylinders shall be installed only aboveground, and shall be set upon a firm foundation of concrete or masonry or be otherwise firmly secured. Flexibility shall be provided in the connecting piping. The requirements of 3.2.17 shall apply.
3.2.9.1	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.9.2(d)	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.10.2(j)	errata	~~The location of the container shall have fixed stairs or another safe method to reach it.~~
3.2.12.1	with changes	A two-stage regulator system, an integral two-stage regulator, or a two-psi regulator system shall be required on all fixed piping systems that serve ½-psig (3.4-kPag) appliance systems [normally operated at 11 in. w.c. (2.7 kPag) pressure]. The regulators utilized in these systems shall meet the requirements of 2.5.7. This requirement includes fixed piping systems for appliances on RVs (recreational vehicles), mobile home installations, manufactured home installations, catering vehicles, and food service vehicle installations. Single-stage regulators shall not be installed in fixed piping systems after February 1, 2001 ~~June 30,1997.~~
3.2.17	additional requirement	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

3.2.18.1	with changes	All of the following shall be required for internal valves in liquid or vapor service installed on containers over 4000-gal(15.2-m^3) water capacity by July 1, 2003.
3.2.18.2	with changes	Automatic shutdown of internal valves in liquid or vapor service shall be provided using thermal (fire) actuation. The thermal element shall be within 5 ft (1.5 m) of the internal valve.
3.2.18.3	with changes	At least one remote shutdown station for internal valves in liquid or vapor service shall be installed not less than 25 ft (7.6 m) or more than 100 ft (30 m) from the liquid transfer point.
3.2.19.1	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.19.2	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.19.3	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.19.6	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.24	with changes	All metallic equipment and components that are buried or mounded shall be coated or protected and maintained to minimize corrosion. ~~Corrosion protection of all other materials shall be in accordance with accepted engineering practice.~~
3.3.3.6	not adopted	For containers at Bulk Plants and Industrial Plants refer to 2.3.3.2.
3.3.6.1	not adopted	See Commission rule §9.140, Uniform Protection Standards (fencing and guardrailing requirements).
3.4.2.1	with changes	Cylinders shall be in accordance with the following requirements: (a) - (d) (no change.) (e) Cylinders with propane capacities greater than 4.2 lb (1.9 kg) ~~2 lb (0.9 kg)~~ shall be equipped as provided in Table 2.3.3.2(a), and an excess-flow valve shall be provided for vapor service. (f) (no change.) (g) Cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ and connected for use shall stand on a firm and substantially level surface. If necessary, they shall be secured in an upright position. (h) (no change.)

3.4.2.4	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.4.2.7	with changes	Transportation (movement) of cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ within a building shall be restricted to movement directly associated with the uses covered by this section and in accordance with the following: (a) Valve outlets on cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ shall be tightly plugged, capped, or sealed with a listed quick-closing coupling or a listed quick-connect coupling. (b) (no change.)
3.4.4.1(b)	with changes	Cylinders having a water capacity greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ shall not be left unattended.
3.4.8.3	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
3.4.8.4	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
3.4.9.2	with changes	Cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1 kg) [nominal 1 lb (0.5 kg)]~~ LP-Gas capacity shall not be located on balconies above the first floor that are attached to a multiple family dwelling of three or more living units located one above the other.
3.7.2.2	with changes	Fixed electrical equipment and wiring installed within classified areas specified in Table 3.7.2.2 shall comply with Table 3.7.2.2 and shall be installed in accordance with NFPA 70, *National Electrical Code*. The provision shall apply to vehicle fuel operations. (*See Figure 3.7.2.2.*) *Exception: This provision shall not apply to fixed electrical equipment at residential ~~or commercial~~ installations of LP-Gas systems or to systems covered by Section 3.8.*
3.8.2.8(e)	with changes	The piping system shall be ~~designed,~~ installed, supported, and secured in such a manner to minimize the possibility of damage due to vibration, strains, or wear, and to preclude any loosening while in transit.
3.9.3.8	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.9.3.10	additional requirements	See Commission rule §9.140, Table 1 (relating to uniform protection standards).

3.11.3	with changes	The following provisions shall be required for ASME containers of greater than 4000 gal ~~2001 gal~~ through 30,000 gals.(15.2m^3 ~~7.6m3~~ through 114m^3) water capacity referenced in Section 3.11.
3.11.3.1	with changes	All liquid ~~withdrawal~~ openings and all vapor ~~withdrawal~~ openings that are 1 ¼ in. (3.2 cm) or larger shall meet the requirements of 2.3.3.2(b)(2) ~~be equipped with an internal valve with an integral excess flow valve or excess flow protection~~. The ~~internal~~ valves shall remain closed except during periods of operation. As required, the ~~internal~~ valves shall be equipped for remote closure and automatic shutoff through thermal (fire) actuation.
3.11.3.3	with changes	All liquid and vapor ~~inlet~~ openings of less than 1 ¼ inch shall be equipped in accordance with 2.3.3.2(b)(1) ~~3.11.3(a) and 3.11.3(b) or shall be equipped with a backflow check valve and a positive manual shutoff valve installed as close as practical to the backflow check valve~~.
3.11.4.3(c)	additional requirements	See Commission rule §9.140, Table 1 (relating to uniform protection standards).
3.11.5	not adopted	No applicable Commission language.
4.2.1.1	with changes	~~Transfer operations shall be conducted by qualified personnel meeting the provisions of Section 1-5.~~ At least one qualified person shall remain in attendance at the transfer operation from the time connections are made until the transfer is completed, shutoff valves are closed, and lines are disconnected.
4.2.1.2	not adopted	See Commission rules in Chapter 9, Subchapter A.
4.2.3.8	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
4.2.3.8(i)	errata	Provision for anchorage and breakaway ~~breaking~~ shall be provided on the cargo tank vehicle side for transfer from a railroad tank car directly into a cargo tank vehicle. *(See A.3.2.19.6)*
Tables 4.4.2.2(a) and (b)	errata	Revise the note to tables 4.4.2.2(a) and (b) to read: See 4.4.3.3(a)

4.4.3.1	additional requirement	See Commission rule §9.136, Filling of DOT Containers.
4.4.3.2	with changes	The volumetric method shall be limited to the following containers, where they are designed and equipped for filling by volume: ~~(1) Cylinders of less than 220-lb (91-kg) water capacity that are not subject to DOT jurisdiction~~ (1~~2~~) Cylinders of 101 lb LP-Gas capacity ~~200-lb (91-kg)~~ water capacity or more (2~~3~~) Cargo tanks or portable tank containers complying with DOT specifications MC-330, MC-331, or DOT 51 (3~~4~~) ASME and API-ASME containers complying with 2.2.1.3 or 2.2.2.2
5.2.1.1	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
5.3.1	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
5.4.2.2	not adopted	See Commission rule §9.140(d), Uniform Protection Standards.
5.4.2.1	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
5.4.3	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.
Table 6.2.2.7	errata	In table 6.2.2.7 change the heading of the first column from "lb w.c." to "lb".
6.3.6	with changes	Painting and Marking Liquid Cargo Vehicles. Painting of cargo vehicles shall comply with ~~*Code of Federal Regulations*, Title 49, Part 195~~ 49 Code of Federal Regulations, Section 178.337-1. Placarding and marking shall comply with ~~CFR 49~~ 49 CFR, Section 172, Subparts D and F, respectively.
6.5.2.1	with changes	*Exception (b): Valves and fittings shall be protected by a method ~~approved by the authority having jurisdiction~~ to minimize the possibility of damage.*
8.1.3	not adopted	See Commission rules §§9.51, General Requirements for Training and Continuing Education, and 9.52, Training and Continuing Education Courses.
8.2.2.1(e)(1)	errata	250 psig (1.7 MPag) or 312.5 psig (2.2 MPag) where required if constructed prior to April 1, 2001.

8.2.3(l)	with changes	Where an overfilling prevention device is installed on an engine fuel container, venting of gas through a fixed maximum liquid level gauge shall not be required provided: 1. The OPD is verified by the owner of the vehicle to be working properly; 2. The verification of the valve is documented yearly and clearly marked on the container in a visible location; and 3. The OPD is replaced every two years, documentation is kept by the owner of the vehicle, and the container is marked in a visible location verifying its replacement.
8.2.6.6	with changes	Fuel containers shall be securely mounted to prevent jarring loose and slipping or rotating, and the fastenings shall be designed and constructed to with stand without permanent visible deformation static loading in any direction equal to four times the weight of the container filled with fuel. This shall not prohibit the use of specific mounting brackets designed and manufactured by a container manufacturer, original vehicle manufacturer, or the authorized representative of either. Each specific mounting bracket shall be marked in a visible location, to indicate the manufacturer of the bracket.
8.2.8.1	with changes	The piping system shall be ~~designed~~, installed, supported, and secured in such a manner to minimize damage due to expansion, contraction, vibration, strains, and wear.
8.2.10	with changes	Each over-the-road general-purpose vehicle powered by LP-Gas shall be identified with a weather-resistant diamond-shaped label located on an exterior vertical or near vertical surface on the lower right rear of the vehicle (on the truck lid of a vehicle so equipped, but not on the bumper of any vehicle) inboard from any other markings. The label shall be approximately 4 3/4 in. (120 mm) long by 3 1/4 in (83 mm) high. The marking shall consist of a border and the word PROPANE [1 in. (25 mm) minimum height centered in the diamond] in silver or white reflective luminous material on a black or Pantone 2945 C Royal Blue or equivalent background. (See Figure 8.2.10.)
Chapter 10	not adopted	Commission authority does not extend to marine shipping and receiving activities.
13.1.2.8	errata	In paragraph 13.1.2.8 delete "ICC, Rules for Construction of Unifired Pressure Vessels"
Appendix A	additional requirement	See Commission rule §9.137, Inspection of Cylinders at Each Filling, and CGA Publication C-6 or C-6.3 for further information regarding cylinder inspection.

A.3.2.12.8	errata	Revise paragraph A.3.2.12.8 to read: A.3.2.12.8 Two-psi regulator systems operate with 2 psi (13.8 kPa) downstream of the 2-psi service regulators to the line pressure regulator, which reduces the pressure to anappropriate inches-of-water-column pressure.
A.3.10.2.2	errata	In paragraph A.3.20.2.2 substitute "exposures" for expenses in (5) and substitute "designated" for "designed" in (6).
A.5.5	errata	Revise paragraph A.5.5 to read: See 3.10.2.5
F.5.2.3	errata	Revise paragraph F.5.2.3 to read: F.5.2.3 Percentage values, such as in the example in F.5.2.2, are rounded off to the next lower full percentage point, or to 80 percent in this example.
Figure I.1(a) Note 2	errata	In Figure I.1(a) Note 2, substitute "3.2.2.2(e)" for 3.2.2.2(d)
Figure I.1(b) Note 2	errata	In Figure I.1(b) Note 2 substitute "3.2.2.2(d)" for 3.2.2.2(c)
Figure I.1(b) Note 3	errata	In Figure I.1(b) Note 3 substitute "3.2.2.2 Exception No. 2 for "3.2.2.2(e)"
Figure I.1(c) Note 1 & 2	errata	In Figure I.1(c) Note 1 & 2 substitute "3.2.2.2 Exception No. 3" for "3.2.2.2(f)"

Figure: 25 TAC §295.12(a)

NOTICE TO EMPLOYEES

The Texas Hazard Communication Act (revised 1993), codified as Chapter 502 of the Texas Health and Safety Code, requires public employers to provide employees with specific information on the hazards of chemicals to which employees may be exposed in the workplace. As required by law, your employer must provide you with certain information and training. A brief summary of the law follows.

HAZARDOUS CHEMICALS

Hazardous chemicals are any products or materials that present any physical or health hazards when used, unless they are exempted under the law. Some examples of more commonly used hazardous chemicals are fuels, cleaning products, solvents, many types of oils, compressed gases, many types of paints, pesticides, herbicides, refrigerants, laboratory chemicals, cement, welding rods, etc.

WORKPLACE CHEMICAL LIST

Employers must develop a list of hazardous chemicals used or stored in the workplace in excess of 55 gallons or 500 pounds. This list shall be updated by the employer as necessary, but at least annually, and be made readily available for employees and their representatives on request.

EMPLOYEE EDUCATION PROGRAM

Employers shall provide training to newly assigned employees before the employees work in a work area containing a hazardous chemical. Covered employees shall receive training from the employer on the hazards of the chemicals and on measures they can take to protect themselves from those hazards. This training shall be repeated as needed, but at least whenever new hazards are introduced into the workplace or new information is received on the chemicals which are already present.

MATERIAL SAFETY DATA SHEETS

Employees who may be exposed to hazardous chemicals shall be informed of the exposure by the employer and shall have ready access to the most current material safety data sheets (MSDSs), which detail physical and health hazards and other pertinent information on those chemicals.

LABELS

Employees shall not be required to work with hazardous chemicals from unlabeled containers, except portable containers for immediate use, the contents of which are known to the user.

EMPLOYEE RIGHTS

Employees have rights to:

- access copies of MSDSs
- information on their chemical exposures
- receive training on chemical hazards
- receive appropriate protective equipment
- file complaints, assist inspectors, or testify against their employer

Employees may not be discharged or discriminated against in any manner for the exercise of any rights provided by this Act. A waiver of employee rights is void; an employer's request for such a waiver is a violation of the Act. Employees may file complaints with the Texas Department of Health at the toll free number provided below.

EMPLOYERS MAY BE SUBJECT TO ADMINISTRATIVE PENALTIES AND CIVIL OR CRIMINAL FINES RANGING FROM $50 TO $100,000 FOR EACH VIOLATION OF THIS ACT.

Further information may be obtained from:

Texas Department of Health
Product Safety Division
Hazard Communication Branch
1100 West 49th Street
Austin, Texas 78756

1-800-452-2791
(512) 834-6603
Fax: (512) 834-6644

TDH
Texas Department of Health

Approved 6/03

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice Regarding Private Real Property Rights Preservation Act (SB 14) Guidelines

In 1995 the Legislature enacted Senate Bill 14, the Private Real Property Rights Preservation Act (the Act), codified at Government Code, Chapter 2007. As required by the Act, the Office of the Attorney General prepared Guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. Those Guidelines were published in the January 12, 1996 issue of the *Texas Register* (21 TexReg 387). Current versions of the guidelines appear on the Office of the Attorney General website at www.oag.state.tx.us, and are published at 27 TexReg 10173. The Act also requires the Office of the Attorney General to review the Guidelines at least annually and revise them as necessary.

The Office of the Attorney General has begun its annual review and invites comments whether the Guidelines are consistent with actions of the 78th Legislature and the decisions of the United States and Texas Supreme Courts from June 1, 2002 through May 31, 2003. Please address comments to Cue D. Boykin, Assistant Attorney General, Office of the Attorney General, Post Office Box 12548, Austin, TX 78701-2548 no later than August 15, 2003.

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at 512-463-2110.

TRD-200303748
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: June 18, 2003

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following projects(s) during the period of June 6, 2003, through June 12, 2003. The public comment period for these projects will close at 5:00 p.m. on July 18, 2003.

FEDERAL AGENCY ACTIONS:

Applicant: Brazos Pilots Association; Location: The project is located at along a private canal adjacent to the Gulf Intracoastal Waterway at 2502 Deep Sea Drive, Freeport, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates: Zone 15; Easting: 272195; Northing: 3201439. Project Description: The applicant proposes to remove up to 600 cubic yards of material by hydraulic dredge to a depth of -6 feet Mean Low Tide (MLT), from a current depth of -4 feet MLT, and place it in the Brazos River Harbor Navigation District Disposal Area known as Confined Placement Site No. 2-3 with 10 years maintenance dredging to -6 MLT. The applicant has an agreement with the Brazos River Harbor Navigation District to use the placement area. CCC Project No.: 03-0188-F1; Type of Application: U.S.A.C.E. permit application #23010 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: J.C. Huck, Sr.; Location: The project is located along Old Oyster Creek Cut, in Village of Surfside Beach, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates: Zone 15; Easting: 276696; Northing: 3205723. Project Description: The applicant proposes to construct three boat sheds and slips. Shed B will be 25 feet in length and 43 feet wide. Shed C will be 25 feet in length and 13 feet wide. Shed D will be 25 feet in length and 30 feet wide. The purpose for the construction of the boat sheds and lifts is to provide for retirement income and the need for boatlifts in the area. CCC Project No.: 03-0197-F1; Type of Application: U.S.A.C.E. permit application #22806(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Pioneer Natural Resources, Inc.; Location: The project is located in the Outer Continental Shelf Federal Waters, Gulf of Mexico, in the East Breaks Safety Fairway in Blocks 354 and 310, Offshore Texas. The entire project will extend from an existing platform, located in Mustang Island Block A-103, 32 miles southeasterly to an existing manifold in East Breaks Block 579. Project Description: The applicant proposes to install, operate, and maintain a 10-inch bulk natural gas pipeline to transport production from a subsea manifold in East Breaks Block 579 to a host platform located in Mustang Island Block A-103. The entire project is approximately 32 miles in length. The permit area is limited to East Breaks Blocks 354 and 310, the portion crossing the Federal Fairway. The pipeline will be laid on the sea floor in water depths of approximately 500 feet to 750 feet within the fairway. CCC Project No.: 03-0198-F1; Type of Application: U.S.A.C.E. permit application #23077 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Village of Tiki Island; Location: The project is located at 802 Tiki Drive, adjacent to the shoreline of a 7.2-acre marsh complex on Tiki Island, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virgina Point, Texas. Approximate UTM Coordinates: West side of proposed breakwater: Zone 15; Easting: 314700; Northing: 3242187. East side of proposed breakwater: Zone 15; Easting: 314857; Northing: 3242309. Project Description: The applicant proposes to construct a breakwater waterward of the existing shoreline of a 7.2-acre marsh complex located on Tiki Island. The breakwater would be constructed of 80-pound concrete bags

placed in an alternating configuration and anchored at 1-foot intervals with iron rebar for stability. The breakwater would follow the approximate 0 (National Geodetic Vertical Datum (NGVD) elevation contour for an estimated 980 linear feet along the West Bay shoreline and would be targeted to a height approximately 2.0 NGVD. Eight-foot-wide (top) gaps would be left in the breakwater to an elevation of 0.6 NGVD at 100-foot intervals to ensure proper water circulation and ingress/egress of marine organisms and detrital nutrients. The project would provide protection from wind and wave erosion for 7.2 acres of eroding marsh, tidal flats, and oyster reef along the shoreline of West Bay of Tiki Island. Additionally, marsh vegetation would be planted along the existing shoreline. The goal is for sediment to accrete behind the breakwater and provide additional substrate for marsh or sedgerass colonization in the resulting lagoon. Approximately 110 cubic yards of concrete (in 80 pounds bags) would be used for this project with a footprint of 0.04 acres of waters. CCC Project No.: 03-0199-F1; Type of Application: U.S.A.C.E. permit application #23035 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387).

FEDERAL AGENCY ACTIVITIES:

Applicant: PBS&J Location: The project is located in the south side of the Corpus Christi Ship Channel (CCSC) in Corpus Christi Bay, south of Port Ingleside, Nueces County, Texas. Project Description: The berthing facility, designed to accommodate up to three vessels, was constructed to provide safe lay berths for vessels waiting to enter or leave the Port of Corpus Christi. Construction costs for the berthing facility was $3.1 million. The berthing facility comprises mooring dolphins, mooring anchors, and wooden three pile structures. Six mooring dolphins were constructed in May 1979 and are large concrete deck structures supported by steel piles, located on the north side of the berthing facility referred to as B1 to B6 (east to west). Ten mooring anchors, constructed in April 1983, are smaller concrete deck structures supported by concrete piles, located on the south side of the berthing facility referred to as M1 to M10 (east to west). The three pile wooden clusters consist of groups of three wooden piles that act as additional fendering around the mooring anchors. Since construction, none of the facilities have been used for their designated purpose. Periodic inspection and maintenance have not prevented damage to the facilities caused by unauthorized use and natural deterioration. Damage to the structures and natural deterioration has rendered the berthing facility unusable and is creating a potential navigation hazard for commercial barge and recreational boat traffic. In August 1992, the facilities were closed to public use.

The existing berthing facility along the CCSC is no longer used by deep draft vessels and is creating a potential navigation hazard for commercial barge and recreational boat traffic. The USACE proposes to remove the berthing facility by a method that involves hydro jetting and/or dredging via drag line in an impact area extending 50 feet around each structure. The maximum amount of material to be potentially excavated will be 7,5000 cubic yards (cy) of material (over 2.8 acres) of impact area for the mooring anchors, and 1,700 cy (over 1.8 acres) for the mooring dolphins. Any excavated material associated with the mooring dolphins would be temporarily sidecast within the 50-foot impact area and replaced after removal of the structures. Excavated material associated with the mooring anchors would be temporarily sidecast on a barge and replaced after removal of the structure is complete. Turbidity curtains would be utilized around the 50-foot impact area. Impacts to approximately 0.8 acres of patchy shoalgrass will be mitigated through a replanting effort. The proposed project impacts would not exceed 8 acres of bottom surface area. Concrete rubble generated by removal work will be used for a beneficial purpose, if possible. The USACE proposes to donate the concrete decks, steel piles, and concrete piles to the Texas Parks and Wildlife Artificial Reef Program. The contractor will be responsible for disposal of ancillary materials. CCC Project No.: 02-0191-F2; Type of Application: U.S.A.C.E. permit application #23035 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200303752
Jerry E. Patterson
Commissioner, General Land Office
Coastal Coordination Council
Filed: June 18, 2003

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 2003

An additional 1/4% city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective July 1, 2003, in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Azle (Parker Co)	2184035	.020000	.082500
Azle (Tarrant Co)	2184035	.015000	.077500
Florence (Williamson Co)	2246086	.012500	.075000
Primera (Cameron Co)	2031129	.012500	.075000

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective July 1, 2003 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Helotes (Bexar Co)	2015227	.015000	.077500
Hickory Creek (Denton Co)	2061186	.017500	.080000
Liberty Hill (Williamson Co)	2246111	.020000	.082500

An additional 1/2% sales and use tax for Sports and Community Venue will become effective July 1, 2003 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Portland (Nueces Co)	2205076	.020000	.082500
Portland (San Patricio Co)	2205076	.020000	.082500

An additional 1% city sales and use tax for improving and promoting economic and industrial development that includes an additional 1/2% as permitted under Article 5190.6, Section **4A** plus an additional 1/2% as permitted under Article 5190.6, Section **4B** will become effective July 1, 2003 in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Iowa Park (Wichita Co)	2243034	.020000	.082500

A 1/4% Special Purpose District sales and use tax will become effective July 1, 2003 in the Special Purpose District listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Liberty Hill Public Library District	5246512	.002500	SEE NOTE 1

A 1/2% Special Purpose District sales and use tax will become effective July 1, 2003 in the Special Purpose District listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Timpson Public Library District	5210505	.005000	SEE NOTE 2

NOTE 1: The Liberty Hill Public Library District is located in the southeastern portion of Williamson County, but does **not** include all of Williamson County. The Liberty Hill Public Library District has the same boundaries as the Liberty Hill Independent School District. The City of Liberty Hill is located entirely within the Liberty Hill Public Library District. The unincorporated area of Williamson County in ZIP codes 76527, 76550, 78605, 78608, 78611, 78615, 78626, 78627, 78628, 78630, 78641 and 78642 are partially located within the Liberty Hill Public Library District. Contact the district representative at 512/515-5261 for additional boundary information.

NOTE 2: The Timpson Public Library District is located in the southwestern portion of Shelby County, but does **not** include all of Shelby County. The Timpson Public Library District has the same boundaries as the Timpson Independent School District. The City of Timpson is located entirely in the Timpson Public Library District. The unincorporated area of Shelby County in ZIP code 75975 is partially located within the Timpson Public Library District. Contact the district representative at 936/254-3344 for additional boundary information.

TRD-200303711
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: June 17, 2003

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Notice of Contract Award

Pursuant to Chapter 2254, Subchapter B, and Chapter 403, Section 403.028, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award in connection with Request for Proposals (RFP #155a) to assist the Comptroller in conducting Medicaid Managed Care Premium Payment Audits.

A contract was awarded to: Interim Solutions for Businesses Incorporated, 7107 Beauford Drive, Austin, Texas 78750. The total amount of this contract is not to exceed $32,000.00. The term of the contract is June 12, 2003 through September 30, 2003.

The project review will be completed on or before September 30, 2003.

The notice of request for proposals (RFP #155a) was published in the March 28, 2003, issue of the *Texas Register* (28 TexReg 2755).

TRD-200303570
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 13, 2003

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Chapter 54, Subchapters F and G, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP #157a) for the purpose of obtaining investment consulting services for the Board. The selected consultant (Consultant) will advise and assist the Board and the Comptroller in administering all of the Board's investment activities related to the Texas Tomorrow Constitutional Trust Fund (Fund). The Fund currently includes a prepaid tuition program and a college savings plan as authorized under Section 529 of the Internal Revenue Code. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary Consultant. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the Consultant will be expected to begin performance of the contract on or about September 2, 2003.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, June 20, 2003, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, June 20, 2003, 2:00 p.m. CZT. The Texas Marketplace website address is http://esbd.tbpc.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, June 27, 2003. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Tuesday, July 1, 2003, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice of issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Monday, July 14, 2003. Proposals received in ROOM G24 after this time and date will not be considered.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s).

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - June 20, 2003, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - June 27, 2003, 2:00 p.m. CZT; Official Responses to Questions posted - July 1, 2003; Proposals Due - July 14, 2003, 2:00 p.m. CZT; Contract Execution - August 29, 2003, or as soon thereafter as practical; Commencement of Work - September 2, 2003. Revisions to this schedule will be posted as revisions to the Texas Marketplace notice of issuance of this RFP.

TRD-200303743
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 18, 2003

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 06/23/03 - 06/29/03 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 06/23/03 - 06/29/03 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 07/01/03 - 07/31/03 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 07/01/03 - 07/31/03 is 10% for Commercial over $250,000.

1[1]Credit for personal, family or household use.

2[2]Credit for business, commercial, investment or other similar purpose.

TRD-200303738
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 18, 2003

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Texas Steel Credit Union (Fort Worth) seeking approval to merge with My Federal Credit Union (Fort Worth) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200303736
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2003

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Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received for Cameron Credit Union, Houston, Texas. The credit union is proposing to change its name to Texas One Community Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200303735
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2003

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Cameron Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, or attend school within the geographic area from North of Loop 610 to the West of Interstate 45 to the South of Farm Road 2920 and to the East of Highway 290, which includes United States Postal Zip Codes 77018, 77092, 77091, 77088, 77040, 77041, 77086, 77064, 77065, 77095, 77429, 77375, 77070, 77379, 77069, 77066, 77388, and 77379, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas to expand its field of membership. The proposal would permit persons who work or reside within a 10-mile radius of the following CCU Branch locations: 3040 N. Josey Lane, Carrollton, TX 75007; 2150 S. Hwy. 121, Lewisville, TX 75067; 1301 Custer Rd., Plano, TX 75075; 2225 W. Ledbetter, Dallas, TX 75224; 10203 E. Northwest Highway, Dallas, TX 75238; 2100 W. Northwest Highway, Grapevine, TX 76051; 18212 Preston Rd., Dallas, TX 75252; 2645 Arapaho Rd., Garland, TX 75044; 215 N. Carrier Pkwy., Grand Prairie, TX 75050; 14211 Coit Rd., Richardson, TX 75254; 6800 W. Virginia Pkwy., McKinney, TX 75070; 921 Westgate Way, Wylie, TX

75098; 4268 Legacy Drive, Frisco, TX 75034; 2101 Justin Rd., Flower Mound, TX 75028; 309 Main St., Frisco, TX 75034;1108 N. Hwy.377, Roanoke, TX 76262; 3630 Forest Lane, Dallas, TX 75229; SE corner of Hwy 205 and Quail Run, Rockwall, TX 75032; NE corner of Garden Ridge and Main, Lewisville, TX 75067, to be eligible for membership in the credit union.

An application was received from Community Credit Union, Plano, Texas to expand its field of membership. The proposal would permit persons who work or reside in, attend school in, are paid from, business and non-business entities, organizations, and associations within the Northwest Independent School District, to be eligible for membership in the credit union.

An application was received from Members Choice Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who attend school in the area of Houston bounded by Highway U.S. 59 to the Montgomery County line on the west, the Montgomery County line of the north, the East Fork San Jacinto River, Lake Houston, and the San Jacinto River on the east, Highway U.S. 90 on the south to Beltway 8, and Beltway 8 on the south of its intersection with Highway U.S. 59 and also within the boundaries of the Katy and Cy-Fair Independent School Districts to be eligible for membership in the credit union. In addition, the application seeks to remove exclusionary language relating to individuals who work or reside in the above noted areas that are within the field of membership of Members Choice Credit Union which protects the field of membership of certain occupational or associational based credit unions.

An application was received from Denton Area Teachers Credit Union, Denton, Texas to expand its field of membership. The proposal would permit members of the Friends of the Texas Credit Union Foundation that live, work, or attend school primarily in the North Central Texas Council of Government area (NCTCOG), to be eligible for membership in the credit union.

An application was received from TruWest Credit Union, Scottsdale, Arizona to expand its field of membership in Texas. The proposal would permit anyone that works for or lives in The Riata Apartment Community located in Austin, Texas with the following addresses: 12300 Riata Trace Pkwy; 12340 Alameda Trace Circle; 12320 Alameda Trace Circle; 12345 Alameda Trace Circle; 12445 Alameda Trace Circle; 12440 Alameda Trace Circle; 12370 Alameda Trace Circle; 5700 Tapadera Trace; 12610 Riata Trace Parkway, to be eligible for membership in the credit union.

An application was received from Star One Credit Union, Sunnyvale, California to expand its field of membership in Texas. The proposal would permit any and all persons who live, regularly work, or current attend school within a ten-mile radius of the credit union's office located at 6800 Burleson Road, Austin, Texas, to be eligible for membership in the credit union.

An application was received from Star One Credit Union, Sunnyvale, California to expand its field of membership in Texas. The proposal would permit all employees of the Texas Parks & Wildlife Department that are paid from, or supervised from their headquarters in Austin, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200303747
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2003

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) for a Merger or Consolidation - Approved

SAHA Credit Union and Southside Credit Union - -See *Texas Register* issue dated March 28, 2003.

TRD-200303737
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2003

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Texas Department of Criminal Justice

Notice to Bidders

The Texas Department of Criminal Justice invites bids for the construction of Re-roofing of Multiple Buildings at Midway, Texas. The project consists of demolition of existing roof systems and installation of new roof system for the main unit and numerous outbuildings at the existing Ferguson Unit, Midway, Texas. The work includes architectural, metal fabrication, rough carpentry, structural, thermal & moisture protection and painting as further shown in the Contract Documents prepared by Secord & Lebow Architects, L.L.P.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

(A) Contractor must have a minimum of five (5) consecutive years of experience as a Roofing Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project; and

(B) Contractor must be bondable and insurable at the levels required.

Contractors are required to submit a HUB Subcontracting Plan as detailed in Exhibit I. Failure to submit a completed HUB Subcontracting Plan will result in the bid being rejected from further consideration.

All Bid Proposals must be accompanied by a Bid Deposit in the amount of 5% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $120.00 (One hundred twenty dollars), non-refundable, per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable and sent to the Architect/Engineer:

Secord & Lebow Architects, L.L.P., 901 Indiana, Suite 200, Wichita Falls, Texas 76301, Attn: Troy Secord, AIA.

Phone: 940 767-7478; Fax: 940 397-0553; Email: tsecord@secordlebow.com

A Mandatory Pre-Bid Conference will be held at 10:00 a.m. on July 15, 2003 at the Ferguson Unit, Midway, Texas, followed by a site-visit. ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY. ALL BIDDERS SHALL ATTEND THIS CONFERENCE.

Bids will be publicly opened and read at **2:00 p.m. on August 4, 2003,** in the Contracts and Procurement Conference Room located in the West Hill Mall, Suite 525, Two Financial Plaza, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least **26.1%** of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200303719
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: June 17, 2003

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Texas Council for Developmental Disabilities

Notice of Intent to Award Funds to the Coalition of Texans with Disabilities

Background: The Texas Council for Developmental Disabilities announces its intention to award funds to the Coalition of Texans with Disabilities (CTD) to produce of a video documentary designed to challenge myths about the abilities and potential of people with disabilities to secure a meaningful place in society. The Coalition recently received the "Barbara Jordan" media award.

Description of Project: A video will be made documenting the stories of people with disabilities coping with hardships and various physical and mental barriers to demonstrate the skills and abilities needed to succeed in achieving their dreams.

Terms and Funding: Funding for this grant will begin May 21, 2003 and end August 31, 2003. Funding will not exceed $21,000.00 during this time period.

For information regarding this announcement please contact Carl Risinger, Grants Management Director, Texas Council for Developmental Disabilities, (512) 437-5435.

TRD-200303729
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: June 18, 2003

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Texas Education Agency

Request for Applications Concerning Prekindergarten and Kindergarten Grant Program, 2003-2004 School Year, Cycle 8

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-03-025 from school districts, shared services arrangements of school districts, and/or open-enrollment charter schools to continue programs implemented during the 2002-2003 school year in Cycle 7. Also, applications are requested from school districts, shared services arrangements of school districts, and/or open-enrollment charter schools that did not have Cycle 7 grants to expand their existing half-day prekindergarten programs to a full day.

Description. Cycle 8 of the grant program will be used to provide continuing operating funds for programs that were implemented in the 2002-2003 school year and, funds permitting, for the expansion of existing half-day prekindergarten programs to full day for those school districts and open-enrollment charter schools that did not have programs during the 2002-2003 school year.

Dates of Project. The Prekindergarten and Kindergarten Grant Program (Cycle 8, Prekindergarten Expansion Grants) will be implemented during the 2003-2004 school year. Cycle 8 expansion grants may be renewed for the 2004-2005 school year, provided all terms and conditions of 2002-2003 funding awards have been met.

Project Amount. The 78th Texas Legislature, 2003, appropriated $92.5 million per year to the Prekindergarten and Kindergarten Grant Program for the 2003-2004 and 2004-2005 school years, representing a total of $185 million in state funds. Cycle 8 grants will be funded based on the additional attendance in the same manner as current Foundation School Program funding.

Selection Criteria. Applications must address each requirement as specified in the RFA to be considered for funding. Priority will be given to school districts and open-enrollment charter schools that received awards under previous Cycle 7 funding. If funds remain after funding this priority group, new expansion programs will be funded. Within the group of new expansion program applicants, priority will be given to school districts and open-enrollment charter schools where student performance on the Grade 3 Texas Assessment of Knowledge and Skills (TAKS) tests falls substantially below the state average. Additional priority will be given to school districts and open-enrollment charter schools that serve the highest percentages of eligible (limited English proficient, educationally disadvantaged, and homeless) children. Educationally disadvantaged is defined as those children eligible to participate in the national free or reduced-price lunch program.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-03-025 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e- mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA or the Prekindergarten and Kindergarten Grant Program, contact Clem Gallerson, State Funding Division, Texas Education Agency, telephone (512) 463-9238. Questions regarding prekindergarten curriculum and programs should be addressed to Cami Jones, Curriculum and Professional Development, Texas Education Agency, telephone (512) 463-9501.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. Central Time, Thursday, July 24, 2003, to be considered.

TRD-200303744
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: June 18, 2003

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Request for Applications Concerning the Texas Automotive Youth Educational Systems Project

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-03-023 from nonprofit organizations in Texas to partner with the TEA and Automotive Youth Educational Systems, Inc. (AYES) in implementing the AYES project in Texas.

Description. The purpose of the AYES project is to encourage bright students with a good mechanical aptitude to pursue careers in the fields of automotive service technology or collision repair/refinishing, and to prepare them for entry-level positions or challenging academic options. The objectives of the project are: 1) to increase the number of local business/education partnerships between automotive dealerships and Automotive Service Excellence (ASE)-certified secondary and/or vocational schools; 2) to strengthen the consistency of the implementation of AYES throughout the geographic area; and 3) to enhance the quality of the AYES initiative to ensure that it meets or exceeds AYES performance standards.

The recipient will serve as co-sponsor for the Texas AYES program and will assume the following responsibilities: 1) support and further AYES goals and strategies relative to establishing a national workforce preparation system serving the retail automotive industry; 2) develop an AYES business plan in coordination with AYES to identify state-specific objectives and define strategies to meet those objectives; 3) promote AYES among key dealers and secondary schools in targeted communities; 4) support, promote, and seek consistency in the implementation of the AYES initiative; 5) support AYES efforts to increase the number of ASE-certified schools in the geographic area; 6) designate an individual (the "AYES State Field Manager") to manage state and local AYES activities; 7) provide compensation and benefits to the AYES State Field Manager for the purpose of managing state and local AYES activities; and 8) assume responsibility for other costs related to the activities of the AYES State Field Manager.

Project Funding. The AYES project will be implemented during the 2003-2004 school year. Applicants should plan for a starting date no earlier than August 1, 2003, and an ending date no later than March 31, 2003. Funding will be provided for one (1) project.

The successful applicant must provide matching funds in the amount of $45,000 to implement the AYES initiative in Texas. This will be supplemented with $35,000 in non-federal funding from the National Automobile Dealers Association and AYES, Inc, plus $80,000 in federal funding (funded 100% by the Carl D. Perkins Vocational and Technical Education Act of 1998) from the Texas Education Agency, for a total of $160,000 for the 2003-2004 school year.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Special consideration will be given to applicants that have strong partnerships with local automobile dealers. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-03-023 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Hank Madeley, Division of Career and Technology Education, Texas Education Agency, (512) 463-9311.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Thursday, July 31, 2003, to be considered for funding.

TRD-200303745
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: June 18, 2003

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Texas Commission on Environmental Quality

Notice of District Petition

Notice mailed June 10, 2003.

TCEQ Internal Control No. 04092003-D04; REAL PROPERTY EXCHANGE, L.C., Gene P. McCutchin, Michael C. Ramos, DAVID W. LIGHT FAMILY PARTNERSHIP, LTD., Susan Light Lawhon, and David W. Light III, (Petitioners) filed a petition for creation of Collin County Municipal Utility District No.1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of and hold title to the land to be included in the proposed District; (2) the proposed District will contain approximately 520.748 acres located within Collin County, Texas; and (3) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. There are no lienholders on the property to be included in the proposed District. The petition further states that the proposed District will: (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioners estimate that the cost of the project will be approximately $29,760,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on these petitions if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687- 4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200303723

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 17, 2003

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Notice of Proposed Revision to the Selected Remedy for Materials Recovery Enterprises State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the proposed revision to the selected remedy for the site. The meeting will be held on July 31, 2003, at the Jim Ned High School Cafetorium, in Tuscola, Texas.

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of a proposed revision to the selected remedy for the Materials Recovery Enterprises state Superfund site (MRE Site).

The MRE site is an abandoned commercial Class I industrial solid waste disposal facility located approximately 0.25 mile north of Farm-to-Market 604 and 0.5 mile east of US 83 about four miles southwest of Ovalo, and about 20 miles south southwest of Abilene, Taylor County, Texas. The site consists of five tracts of land totaling 11.47 acres. The primary waste storage unit was a decommissioned Atlas missile silo which the Materials Recovery Enterprises, Inc., company converted to receive wastes. The facility also contained a truck unloading platform, an evaporation pond, a drum storage area, and the buried remnants of the liner from the evaporation pond.

The MRE Site was proposed for listing on the state registry of Superfund sites in the July 25, 1997 issue of the *Texas Register* (22 TexReg 6970). In accordance with 30 TAC §335.349(a), concerning General Requirements for Remedial Activities, and Texas Health and Safety Code, §361.187, concerning Proposed Remedial Action, a public meeting regarding the proposed remedial action was held in Tuscola, Texas on November 8, 2001. The purpose of the meeting was to provide information to the public and accept comments on the remedy which was initially proposed. That remedy called for removal and disposal of a portion of the water from the missile silo and evaporation pond, and the permanent disposal of the remaining water in the silo.

In order to address public concern that the water in the silo should be removed, and to alleviate the burden and expense of long-term monitoring of the silo water levels, the TCEQ is proposing to revise the previously-selected remedy to require the following enhancements: 1) removal of the majority of the water from the silo; 2) on-site treatment and spray evaporation of the water from the silo and evaporation pond; and 3) filling the silo with soil and flowable fill or low strength concrete. This remedy will also reduce the need for long-term maintenance at the site.

A public meeting will be held at the Jim Ned High School Cafetorium, 830 Garza Avenue, Tuscola, Texas, on Thursday, July 31, 2003, at 7:00 p.m. to discuss proposed revisions to the previously-selected remedy. The public meeting will be legislative in nature and is not a contested case hearing under Texas Government Code, Chapter 2001. The commission also published notice of the meeting in the June 26, 2003 edition of the *Jim Ned Journal*, a newspaper of general circulation in the county in which the facility is located.

All persons desiring to make comments on the proposed revision to the selected remedy for the silo may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. July 31, 2003 and should be submitted in writing to Mr. Jeffrey E. Patterson, Texas Commission on Environmental Quality, Remediation Division, MC 143, P. O. Box 13087, Austin, Texas 78711-3087. The public comment period for this proposed revision to the selected remedy for the silo will end at the completion of the public meeting on July 31, 2003.

A portion of the records for this site, including documents pertinent to the proposed revision to the selected remedy, is available for review during regular business hours at the Abilene Public Library, located at 202 Cedar Street, Abilene, Texas, (915) 677-2474 and the Tuscola Mayor's Office, Tuscola City Hall, located at 418 Graham, Tuscola, Texas, (915) 554-7766. Copies of the complete public record file may be obtained during regular business hours at the TCEQ Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas, (512) 239-2920. Photocopying of file information is subject to payment of a fee. Handicapped parking is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

For further information regarding the public meeting, please call Mr. John Flores, TCEQ Community Relations, (800) 633-9363, extension 5674.

TRD-200303710

Paul Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 17, 2003

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Notice of Water Quality Applications

The following notices were issued during the period of June 6, 2003 through June 17, 2003.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests

for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

A. SCHULMAN, INC. which operates a plastics dispersion plant, has applied for a major amendment to TPDES Permit No. 00337 to authorize less stringent effluent limitations for total copper and total zinc at Outfalls 001 and 002; and to delete internal monitoring point designated as Outfall 102. The current permit authorizes the discharge of treated domestic sewage at a daily average flow not to exceed 10,000 gallons per day via Outfall 001, and the discharge of storm water runoff and previously monitored effluent (contact cooling water and cooling tower blowdown) at a daily average dry weather flow not to exceed 20,000 gallons per day via Outfall 002. The facility is located on Thomas Street approximately 1,500 feet east of Farm-to-Market Road 105 and 3,000 feet west of Farm-to-Market Road 2177, adjacent to the west side of the City of West Orange, Orange County, Texas.

CROWN CENTRAL PETROLEUM CORPORATION which operates the Pasadena Refinery, has applied for a renewal of TPDES Permit No. 00574, which authorizes the discharge of storm water and hydrostatic test water via Outfalls 001, 002, and 003, on an intermittent and flow variable basis. The facility is located at 111 Red Bluff Road, immediately northeast of the intersection of Red Bluff Road and South Shaver Street, as well as immediately southeast of the intersection of Red Bluff Road and State Highway 225, in the City of Pasadena, Harris County, Texas.

CITY OF DANBURY has applied for a renewal of TPDES Permit No. 10158-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 504,000 gallons per day. The facility is located on Avenue L between Seventh and Eigth Streets on the west side of Danbury in Brazoria County, Texas.

DEGUSSA ENGINEERED CARBONS which operates the Echo Carbon Black Plant, a carbon black manufacturing facility, has applied for a renewal of TPDES Permit No. 00814, which authorizes the discharge of process wastewater, boiler blowdown, cooling tower blowdown, treated domestic wastewater, and storm water, on an intermittent and flow variable basis via Outfall 001. The facility is located adjacent to Farm-to-Market Road 736, approximately two miles east of the intersection of State Highway 87 and Farm-to-Market Road 3247, and three miles northeast of the City of Orange, Orange County, Texas.

FORT BEND COUNTY FRESH WATER SUPPLY DISTRICT NO. 2 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14433-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility will be located on the west side of Rustic Lane, approximately 800 feet south of E.W. Cumings Road in Fort Bend County.

GULF UTILITY SERVICE, INC. has applied for a renewal of TPDES Permit No. 13643-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1.5 miles southeast of the intersection of Farm-to-Market Roads 2354 and 1405, on the south side of Farm-to-Market Road 2354 in Chambers County, Texas.

H. MUEHLSTEIN & COMPANY, INC. which operates a plastic compounding and resin distribution facility, has applied for a renewal of TPDES Permit No. 02294, which authorizes the discharge of treated process wastewater and utility wastewater at a daily average flow not to exceed 20,000 gallons per day via Outfall 001; rail car and silo wash water and storm water on an intermittent and flow variable basis via Outfall 002; storm water on an intermittent and flow variable basis via Outfall 003; and treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day via Outfall 004. The facility is located at 13001 Almeda Road approximately 0.5 mile north of the intersection of State Highway 521 and Almeda Genoa Road in the City of Houston, Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 50 has applied for a renewal of TPDES Permit No. 11770-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 550,000 gallons per day. The facility is located approximately 1 mile south of U.S. Highway 90 and 0.5 miles west of the end of Magnolia Street in Barrett Station in Harris County, Texas.

HIGH ISLAND INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13886-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 28,000 gallons per day. The facility is located approximately 4,000 feet north of the intersection of State Highway 124 and State Highway 87 in Galveston County, Texas.

HOMETOWN TIMBERCREST UTILITY, L.P. has applied for a renewal of TPDES Permit No. 13487-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 600 feet east of the intersection of Kuykendahl Road and Huffsmith Road in Harris County, Texas.

HORRAL INGRAM JONES, JR. has applied for a renewal of Permit No. 13998-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day via surface irrigation of 5 acres of non-public access agricultural land cultivated annually by three plantings of barley (hay) and one planting of perennial rye to be harvested, baled, and used on the Jones Farm. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located between Old State Highway 105 and the Gulf, Colorado and Santa Fe Railroad, approximately 0.53 mile southwest of the intersection of Old State Highway 105 and Farm-to-Market Road 1486, and approximately 1.1 miles southwest of the community of Dobbin in Montgomery County, Texas.

HOUSTON FUEL OIL TERMINAL, INC. AND CHARTCO TERMINAL, L.P. which operates a private bulk petroleum storage facility, has applied for a renewal of TPDES Permit No. 02277, which authorizes the discharge of treated storm water and facility wastewater on an intermittent and flow variable basis via Outfall 001; and untreated storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 16642 Jacintoport Boulevard, on the north bank of the Houston Ship Channel, in the City of Houston, Harris County, Texas.

CARY D. JUBY, d.b.a. Cap-Tex, Inc (operator) and Fredrick E. Juby (landowner), has submitted application for a new permit, Proposed Permit No. 04470, to authorize the land application of sewage sludge for beneficial use on 54 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located on the northwest side of the intersection of State Highway 183 and County Road 210, approximately 1,500 feet south of Briggs, in Burnet County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 15 has applied for a renewal of TPDES Permit No. 11939-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located approximately 25 miles northwest of downtown Houston, 4.5 miles south of the City of Tomball, and one mile west of the intersection of Gregson Road and State Highway 249 in Harris County, Texas.

THE CITY OF PORT ARTHUR has applied for a renewal of TPDES Permit No. 10364-009, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on Pleasure Island adjacent to the Sabine-Neches Waterway, approximately 1.6 miles northeast of the Gulfgate Bridge in Jefferson County, Texas.

CITY OF SEABROOK has applied for a renewal of TPDES Permit No. 10671-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located adjacent to the intersection of Second Street and Todville Road in the City of Seabrook in Harris County, Texas.

SOUTHERN MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 11001-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 852 Rayford Road, approximately 3,500 feet north of Spring Creek and approximately 4,000 feet east of Interstate Highway 45 in Montgomery County, Texas

SOUTHMOST REGIONAL WATER AUTHORITY which proposes to operate a reverse osmosis potable water treatment plant, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04541, to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 4,000,000 gallons per day via Outfall 001. The facility site is located at 1255 North Farm-to-Market Road 511, approximately 2.7 miles east of the intersection of U.S. Highway 83 and Farm-to-Market Road 511, in the City of Brownsville, Cameron County, Texas.

TXU GENERATION COMPANY LP which operates the Parkdale Steam Electric Station, has applied for a major amendment to TPDES Permit No. 01251 to authorize an extension to the previously authorized temporary variance to the existing water quality standards for copper criterion; to apply an approved site-specific partition coefficient for aluminum in Forney Branch upstream of the Upper Trinity River in Segment No. 0805 of the Trinity River Basin; and delete the monitoring and reporting requirement for total aluminum via Outfalls 001 and 002. The permittee has conducted water quality studies consisting of a copper water-effects ratio (WER) and an aluminum site-specific partition coefficient in Forney Branch, into which the wastewater via Outfalls 001 and 002 are discharged. The studies have indicated that the requested variance extension to water quality standards for copper criterion is justified. Also, the site-specific partition coefficient for aluminum of 5.8% has been approved. The 2000 Texas Surface Water Quality Standards (30 TAC Chapter 307), adopted by the Commission on July 26, 2000, include provisions allowing the use of approved water effects ratios in calculating water quality based effluent limitations. The WER for copper and the 2000 Texas Surface Water Quality Standards (TSWQS), have been submitted to the United States Environmental Protection Agency (EPA) for approval. The permittee has requested an additional three-year extension to the current temporary variance pending EPA approval of the WER and 2000 TSWQS. The current permit authorizes the discharge of low volume waste sources, cooling tower blowdown, and storm water via Outfall 001; and cooling tower blowdown and storm water via Outfall 002 at a combined daily average flow not to exceed 2,300,000 gallons per day. The facility is located at 5770 Parkdale Drive, on the east side of White Rock Creek at the confluence of Forney Branch and White Rock Creek, in the City of Dallas, Dallas County, Texas.

VOPAK TERMINAL GALENA PARK, INC. which operates a "for hire" bulk liquid storage terminal, has applied for a renewal of TPDES Permit No. 01662, which authorizes the discharge of storm water on an intermittent and flow variable basis via Outfall 001. The facility is located at 1500 Clinton Drive, south of Interstate Highway (IH) 10 and east of the IH 610 East Loop on the north bank of Buffalo Bayou/Houston Ship Channel, in the City of Galena Park, Harris County, Texas.

WAL-MART STORES, INC. which operates a warehouse distribution center, has applied for a major amendment to TPDES Permit No. 03597 to authorize an increase in the discharge of treated domestic wastewater and washdown water from a daily average flow not to exceed 20,000 gallons per day to a daily average flow not to exceed 30,000 gallons per day via Outfall 001. The current permit authorizes the discharge of treated domestic wastewater and washdown water at a daily average flow not to exceed 20,000 gallons per day via Outfall 001. The facility is located immediately north of U.S. Highway 79/84, east of Farm-to-Market Road 645 and west of County Road 2206, approximately seven miles southwest of the City of Palestine, Anderson County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

TICONA POLYMERS, INC. which operates the Bishop Plant, which manufactures organic chemicals, plastics, and bulk pharmaceuticals, and purifies and packages sodium formate, has applied for a major amendment to TNRCC Permit No. 00579 to authorize a revision of the existing biomonitoring requirement to substitute an alternative test species, to eliminate the total silver monitoring requirement at Outfall 001, to increase the total nickel limitation at Outfall 001, to authorize the addition of new process wastestreams to Outfall 101 (an internal monitoring point), and to increase the flow and effluent limitations at Outfall 101 based on the additional process wastestreams. The current permit authorizes the discharge of process wastewater, cooling tower blowdown, boiler blowdown, domestic wastewater, and storm water runoff at a daily average flow not to exceed 3,500,000 gallons per day via Outfall 001, and storm water and utility wastewater on an intermittent and flow variable basis via Outfall 002. The facility is located adjacent to State Highway - Loop 428, approximately one (1) mile southwest of the City of Bishop, Nueces County, Texas.

TRD-200303725
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2003

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Notice of Water Rights Application

Notice mailed June 11, 2003.

Application No. 5804; Patsy Anderton, dba A-1 Turf Farm, Applicant, 2429 Cut Off Road, Ennis, Texas 75119, seeks a Water Use Permit pursuant to 11.121, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Applicant seeks authorization to divert up to 375 acre-feet of water per annum from a point on the Trinity River, Trinity River Basin to an existing on-channel reservoir for storage and subsequent diversion for agricultural purposes to irrigate 163 acres of land in the J. Douglas Survey, Abstract 287, approximately 10 miles east of the City of Ennis in Ellis County, Texas. The existing reservoir on Cutoff Slough, tributary of Smith Creek, tributary of the Trinity River, has a surface area of approximately 20 acres and a storage capacity of approximately 120 acre-feet of water, a point on which is located at a bearing of S 50.5 W, 8,700 feet from the NE corner of the aforesaid Hill survey also located at 32.406 N Latitude and 96.469 W Longitude in the J. Douglas Survey. Diversion will be by means of portable pumps from two points: Diversion Point #1 on the right or southwest bank of the Trinity River at a bearing of N62.5

W, 2800 feet from the northeast corner of the William B. Hill Survey Abstract No. 511, also located at 32.424 N Latitude and 96.455 W Longitude into an on-channel reservoir on Cutoff Slough; Diversion Point #2 on the left bank of Cutoff Slough at a bearing of S 50.5 W, 8,700 feet from the NE corner of the aforesaid Hill survey also located at 32.406 N Latitude and 96.469 W Longitude. Diversions will be made by portable pumps at the combined maximum rate of 1,000 gpm (2.23 cfs). The application was received on March 28, 2003, and additional information was received on April 22, 2003. The application was reviewed by the Executive Director and subsequently determined to be administratively complete and filed with the Chief Clerk's Office on May 23, 2003. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200303724
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2003

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on June 12, 2003, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. United Casing Inc., d/b/a United Casing Tubular Services, LTD; SOAH Docket No. 582-03-1649; TCEQ Docket No.1999-1113-IHW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against United Casing Inc., d/b/a United Casing Tubular Services, LTD on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Office of the Chief Clerk, (512) 239-3317.

TRD-200303726
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2003

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on June 12, 2003, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Dickson Weatherproof Nail Company; SOAH Docket No. 582-03-1931; TCEQ Docket No.2000-0504- IWD-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Dickson Weatherproof Nail Company on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Office of the Chief Clerk, (512) 239-3317.

TRD-200303727
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2003

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: Personal Financial Statement due April 30, 2002

Teri H. Mathis, 1010 Baker Rd., Rosenberg, Texas 77471

Troy Simmons, Rt. 3, Box 88R, Longview, Texas 75601

Douglas E. Oldmixon, 1700 N. Congress Ave., #700, Austin, Texas 78701-1496

William L. Transier, 971 Kirby Dr., Houston, Texas 77019

Tony G. Hedges, D.O., 104 East 21st Street, Littlefield, Texas 79339

Angela S. Myres, 2927 Kings Forest Dr., Kingwood, Texas 77339

J. Paul Johnson, Liberty Ink, 4115 Shadow Haven, Fresno, Texas 77545

Linda M. Siy, JPS Health Center Northeast, 837 Brown Trail, Bedford, Texas 76022

John C. Morris, 5800 Techni Drive, Apt. 1210, Austin, Texas 78721

Randall H. Riley, 4000 Hambletonian Ct., Austin, Texas 78746

Charles M. Rutledge, 3033 Cain Road, College Station, Texas 77845

Barry D. Bedwell, 7502 Countyside, Amarillo, Texas 79119

Shadrick Bogany, 2227 Creek Terrace Dr., Missouri City, Texas 77459-2353

Deadline: Eight Days Before an Election Report due October 28, 2002

Marianne Robbins, 900 Broken Feather #373, Pflugerville, Texas 78660

Deadline: Semiannual GPAC Report due January 15, 2003

Lynne D. Moore, Alief Education Assn. PAC, 1522 Plantation Dr., Richmond, Texas 77469

David R. Garcia, Brownsville Police Officers Assn. PAC, 600 E. Jackson St., Brownsville, Texas 78520

Jacqueline L. Hasan, Muslim American PAC, 5522 Avenue K, Galveston, Texas 77551

Carl D. Brown, Texas Southern Party PAC, 3427 Avenue R, Galveston, Texas 77550

Deadline: Monthly MPAC Report due October 7, 2002

Jeffrey J. Benavidez, San Antonio Ironworkers PAC, 4318 Clark Ave., San Antonio, Texas 78223

Deadline: Monthly MPAC Report due November 5, 2002

Jeffrey J. Benavidez, San Antonio Ironworkers PAC, 4318 Clark Ave., San Antonio, Texas 78223

Deadline: Monthly MPAC Report due December 5, 2002

Jeffrey J. Benavidez, San Antonio Ironworkers PAC, 4318 Clark Ave., San Antonio, Texas 78223

Deadline: Monthly MPAC Report due January 6, 2003

Jeffrey J. Benavidez, San Antonio Ironworkers PAC, 4318 Clark Ave., San Antonio, Texas 78223

Deadline: Monthly MPAC Report due February 5, 2003

Raleigh K. Roussell, QUOIN - AGC PAC, 11111 Stemmons Frwy., Dallas, Texas 75229

Jeffrey J. Benavidez, San Antonio Ironworkers PAC, 4318 Clark Ave., San Antonio, Texas 78223

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Deadline: Monthly MPAC Report due March 5, 2003

Ronny L. Martin, Houston Police Officers Union PAC, 1602 State Street, Houston, Texas 77007

Raleigh K. Roussell, QUOIN - AGC PAC, 11111 Stemmons Frwy., Dallas, Texas 75229

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201-6604

Charles S. Baker, Brobeck Good Government Committee, 4801 Plaza on the Lake, Austin, Texas 78746

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Deadline: Monthly MPAC Report due April 7, 2003

Denise K. Doyle, Texas Manufactured Housing Assn. Committee For Responsible Government, P.O. Box 141429, Austin, Texas 78714-1429

Joseph Slovacek, Houston Realty Breakfast Club, P.O. Box 4547, Houston, Texas 77210-4547

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Jennifer N. Stevens, Texas Assn. Of Preferred Provider Organizations PAC, 400 West 15th St. #600, Austin, Texas 78701

Deadline: Monthly MPAC Report due May 5, 2003

Jeffrey J. Benavidez, San Antonio Ironworkers PAC, 4318 Clark Ave., San Antonio, Texas 78223

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

TRD-200303721
Karen Lundquist
Executive Director
Texas Ethics Commission
Filed: June 17, 2003

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Arlington	Physicians Metroplex Hospital	L05658	Arlington	00	6/10/03
New Braunfels	Cancer Care Network of South Texas PA	L05648	New Braunfels	00	6/10/03
Throughout TX	Material Inspection Technology	L05672	Houston	00	6/3/03
Webster	American Molecular Imaging LLC	L05664	Webster	00	6/11/03

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Physician Reliance Network Inc	L05127	Abilene	05	5/30/03
Abilene	National Central Pharmacy	L04781	Abilene	18	6/10/03
Angleton	Dr. Salim F. Dabaghi	L05353	Angleton	02	6/9/03
Austin	The U of TX at Austin Environment Health	L00485	Austin	63	6/13/03
Austin	PPD Development Inc	L04348	Austin	14	6/12/03
Austin	Austin Heart PA	L05580	Austin	05	6/10/03
Beaumont	North Star Steel Texas	L02122	Beaumont	21	6/6/03
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	92	6/6/03
Beaumont	Healthsouth Imaging Services of Beaumont	L05582	Beaumont	01	6/11/03
Bremond	Twin Oaks Power LP	L04280	Bremond	08	6/10/03
Channelview	Enpro Systems Incorporated	L04990	Channelview	09	6/10/03
College Station	College Station Hospital LP	L02559	College Station	48	6/3/03
Crockett	East Texas Medical Center Crockett	L01411	Crockett	25	6/6/03
Dallas	Physician Reliance Network	L05534	Dallas	01	6/4/03
Dallas	Endocrine Associates of Dallas PA	L02668	Dallas	18	6/2/03
Dallas	Cardiovascular Consultants LLP	L04627	Dallas	09	6/3/03
Dallas	Texas Oncology PA	L04878	Dallas	24	6/10/03
Dallas	Cardiovascular Consultants LLP	L04627	Dallas	10	6/6/03
Deer Park	Atofina Petrochemicals Inc	L00302	Deer Park	41	6/5/03
Edinburg	The University of Texas Pan American	L00656	Edinburg	23	6/10/03
El Paso	System Sensor	L05264	El Paso	01	6/5/03
El Paso	Tenet Hospitals Limited	L04758	El Paso	15	6/3/03
Ft Worth	Baylor Medical Center Cityview	L04105	Ft Worth	17	6/3/03
Ft Worth	All Saints Advanced Imaging Center	L05251	Ft Worth	06	6/3/03
Gonzales	KI4U Inc	L05515	Gonzales	01	6/4/03
Greenville	L3 Communications Integrated	L00856	Greenville	24	6/5/03
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	16	6/6/03
Houston	Sheldon Rubenfeld	L04410	Houston	07	6/6/03
Houston	University of Houston	L01886	Houston	46	6/5/03
Houston	Mohammed Attar MD PA	L05615	Houston	01	6/4/03
Houston	River Oaks Imaging and Diagnostic LP	L05493	Houston	02	6/4/03
Houston	Digirad Imaging Solutions Inc	L05414	Houston	15	6/12/03

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	River Oaks Imaging and Diagnostic LP	L05455	Houston	05	6/11/03
Houston	Monitoring Services	L04501	Houston	08	6/9/03
Houston	Cardinal Health	L05536	Houston	05	6/6/03
Houston	GB Biosciences Corporation	L03521	Houston	16	6/13/03
Irving	Baylor Medical Center at Irving	L02444	Irving	47	6/10/03
Jacksonville	Regional Health Care Center	L05362	Jacksonville	10	6/11/03
Lubbock	University Medical Center	L04719	Lubbock	57	6/4/03
Lubbock	Covenant Health System	L01547	Lubbock	74	6/2/03
Lubbock	West Texas Positron LLC	L05482	Lubbock	02	6/10/03
Lufkin	Memorial Medical Center of East Texas	L01346	Lufkin	72	5/30/03
Marble Falls	Austin Heart PA	L05505	Marble Falls	04	6/3/03
Marshall	Harrison Country Hospital Association	L02572	Marshall	21	5/30/03
McKinney	Raytheon Company	L05632	McKinney	01	6/6/03
Midland	HIS Inspection Inc	L04861	Midland	08	6/13/03
New Braunfels	McKenna Memorial Houston	L02429	New Braunfels	34	6/6/03
Port Arthur	Christus St Mary Hospital	L01212	Port Arthur	76	5/30/03
San Antonio	O'Neill and Associates PA	L03710	San Antonio	11	6/2/03
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	40	6/12/03
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	125	6/12/03
Sherman	Wilson N Jones Memorial Hospital	L02384	Sherman	28	6/2/03
Texarkana	Wadley Regional Medical Center	L02486	Texarkana	37	6/9/03
Throughout TX	Petroleum Electronic Instruments Inc	L04030	Bryan	04	6/3/03
Throughout TX	CTL/Thompson Texas LLC	L04900	Dallas	09	6/4/03
Throughout TX	Texas Instruments Incorporated	L05048	Dallas	06	6/6/03
Throughout TX	QTE Group Inc	L05222	Dallas	05	6/13/03
Throughout TX	General Inspection Services Inc	L02319	Hempstead	35	6/4/03
Throughout TX	Material Inspection Technology	L05672	Houston	01	6/6/03
Throughout TX	Cooperheat-MWS Inc	L00087	Houston	104	6/9/03
Throughout TX	Cooperheat MQS Inc	L00087	Houston	105	6/9/03
Throughout TX	BJ Services Company USA	L02684	Houston	43	6/12/03
Throughout TX	Longview Inspection Inc	L01774	LaPorte	195	5/30/03
Throughout TX	Howland Geoscience Inc	L05543	Laredo	02	6/5/03
Throughout TX	City of Lubbock	L01735	Lubbock	29	6/13/03
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	20	6/13/03
Throughout TX	Remington Support Services Inc	L05642	Pasadena	01	6/3/03
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	21	6/13/03
Throughout TX	Conam Inspection	L05010	Pasadena	60	6/10/03
Tyler	Nutech Inc	L04274	Tyler	39	6/2/03
Tyler	Stewart Regional Blood Center	L04826	Tyler	05	6/11/03
Waco	Waco Cardiology Associates	L05158	Waco	06	6/3/03
Weatherford	Parker County Hospital District	L02973	Weatherford	16	6/9/03
Webster	CHCA Clear Lake LP	L01680	Webster	58	5/30/03
Webster	Clear Lake Cardiology Associates PA	L05549	Webster	01	6/11/03
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	88	6/6/03

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Gammatron Inc	L02148	Houston	16	6/6/03
Mont Belvieu	Belvieu Environmental Fuels	L04679	Mont Belvieu	03	6/5/03
Texarkana	Alumax Mill Products Inc	L04663	Texarkana	09	6/12/03
Throughout TX	Trinity Engineering Testing Corporation	L01351	Austin	44	6/4/03
Throughout TX	Rone Engineers	L02356	Dallas	25	6/12/03
Throughout TX	El Paso Corporation	L00180	Houston	23	6/11/03

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Beeville	ESPADA Professional Associates	L05288	Beeville	02	6/4/03
Nacogdoches	Lyle Thorstenson, M.D.	L03420	Nacogdoches	07	6/5/03
Throughout TX	Rainhart Co	L05325	Austin	02	6/2/03
Throughout TX	H L Zumwalt Construction Inc	L05551	Helotes	01	6/2/03

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Sugar Land	Schlumberger Technology Corporation	L00109	Sugar Land		6/5/03

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC), Chapter 289, the Texas Department of Health (department), Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC, Chapter 289. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200303732
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 2003

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Notice of Amendment Number 21 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control, that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The issuance of amendment number 21 authorizes the licensee to conduct a demonstration of an In-Container Vitrification Process to process radioactive waste.

The department has determined that the amendment of the license, 25 Texas Administrative Code (TAC), Chapter 289, and the documentation submitted by the licensee, provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of 25 TAC, Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code, §401.116 and as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 TAC, §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying of the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control.

TRD-200303715
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 17, 2003

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Notice of Amendment Number 22 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The issuance of amendment number 22 corrects an error in a previous amendment. The amendment changes the reference in Condition 16 of the license from Condition 19.B to Condition 19.C.

The department has determined that the amendment of the license, 25 Texas Administrative Code (TAC), Chapter 289, and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of 25 TAC, Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code, §401.116 and as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 TAC §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control.

TRD-200303731
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 2003

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Notice of Amendment Number 23 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The issuance of amendment number 23 corrects an error in the previous amendment and adds clarifying language to Condition 22.H.

The department has determined that the amendment of the license, 25 Texas Administrative Code (TAC), Chapter 289, and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of 25 TAC, Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code, §401.116 and as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 TAC §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control.

TRD-200303730
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 2003

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Notice of Public Hearing on Proposed Human Immunodeficiency Virus (HIV) Medication Program Rules

The Texas Department of Health (department) will hold a public hearing to accept public comments on proposed rules in 25 Texas Administrative Code, Chapter 98, concerning the Texas HIV Medication Program. These proposed rules were published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4041).

The hearing will be held on July 14, 2003, at the Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, in Room M-739, from 1:00 p.m. to 4:00 p.m. The department reserves the right to limit time for public comments.

If you wish to submit written comments, please direct them to: Janet D. Lawson, M.D., Acting Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756.

TRD-200303712
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 17, 2003

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Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certificates of registration: Northwest Texas Healthcare System, Inc., Amarillo, R10050, May 28, 2003; C. E. Vanderholt, D.P.M., Beaumont, R11258, May 28, 2003; Electronic Drilling Control, Inc., Irving, R12091, May 28, 2003; Roentgen Services, Houston, R13224, May 28, 2003; Family Healthcare Chiropractic Center, PC, Cleburne, R20461, May 28, 2003; LTSIP, Inc., Garland, R22477, May 28, 2003; Sanmina Corp, Austin, R23478, May 28, 2003; Nacogdoches Mobile X-Ray and EKG, Nacogdoches, R24018, May 28, 2003; Imaging Sales & Service, Inc., Fort Worth, R25856, May 28, 2003; Jose F. Sotomayor, M.D., Houston, R26006, May 28, 2003; Lower Valley Imaging, El Paso, R26112, May 28, 2003; International Rehabilitation and Therapy, Brownsville, R26251, May 28, 2003; Cosmetic Medical and Laser Centers, P.A., El Paso, Z01477, May 28, 2003.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200303713
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 17, 2003

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Notice of Revocation of Radioactive Material Licenses

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following radioactive material licenses: Quest Diagnostic, Irving, L01253, May 28, 2003; P. M. Engineering & Testing, Houston, L05298, May 28, 2003.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200303714
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 17, 2003

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Texas Health and Human Services Commission

Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 1, 2003, to receive public comment on corrected payment rates for the period of April 1, 2001, through August 31, 2003, for the School Health and Related Services (SHARS) program. The public hearing will be held on July 1, 2003, at 10:00 a.m. in the HHSC Public Hearing Room, in Riata Building III, at 12555 Riata Vista Circle, Austin, Texas 78727-6404, with entry required through Security at the entrance of 12545 Riata Vista Circle. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Nancy Kimble, HHSC Rate Analysis, Mail Code H-410, 1100 West 49th Street, Austin, Texas 78756-3101. Overnight or special delivery mail may be sent, or written comments may be hand delivered, to Ms. Kimble, HHSC Rate Analysis, Mail Code H-410, Riata Building III, 12555 Riata Vista Circle, Austin, Texas, 78727-6404. Alternatively, written comments may be sent via facsimile to Ms. Kimble at (512) 338-6544. Interested parties may request to have mailed to them or may pick up a briefing package concerning the corrected payment rates by contacting Ms. Kimble (telephone: 512-338-6496; FAX: 512-338-6544; or E-mail: nancy.kimble@hhsc.state.tx.us).

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Kimble, by June 30, 2003, so that appropriate arrangements can be made.

TRD-200303591
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: June 13, 2003

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Heart of Texas Council of Governments

Request for Proposals

The Heart of Texas Workforce Development Board (HOTWDB) is accepting proposals for an Operator/Manager for the HOT Workforce Centers. Proposals are due on July 2, 2003 by 12 Noon. Any proposal received after that time and date will not be considered. A pre-proposal conference will be held on June 17, 2003. This meeting will begin at 10:00 a.m. and will be held at the HOT McLennan County Workforce Center located at 925 Columbus Avenue, Waco, Texas.

For bid specifications, the Request for Proposal is available at 300 Franklin Avenue, Waco, Texas, 76701 or by calling (254) 756-7822 or 1-800-637-0536.

The Heart of Texas Workforce Development Board reserves the right to reject any and/or all bids, and to make awards, as they may appear to be advantageous to HOTWDB.

The Heart of Texas Workforce Development Board provides workforce services to six counties; Bosque, Falls, Freestone, Hill, Limestone and McLennan.

TRD-200303576
Brenda Khoury
Executive Assistant
Heart of Texas Council of Governments
Filed: June 13, 2003

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Texas Department of Housing and Community Affairs

Request for Proposal for Bond Counsel

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Division, is issuing a Request for Proposals (RFP) for outside Bond Counsel. Bond Counsel will provide legal services in connection with the issuance of TDHCA's bonds, notes, and other obligations of TDHCA to finance or refinance residential housing and multifamily housing developments and to refund prior bond issues.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 4:00 p.m. Central Standard Time July 20, 2003. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with respondents. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Lucille Spillar, Legal Assistant, General Counsel's office, at 512/475-3726, 507 Sabine, Austin, TX 78701, for a complete copy of the RFP. Communication with any member of the board of directors, the executive director, or TDHCA staff other than General Counsel's office concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200303716
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 17, 2003

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Request for Proposal for Bond/Securities Disclosure Counsel

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Division, is issuing a Request for Proposals (RFP) for outside Bond/Securities Disclosure Counsel. Bond/Securities Disclosure Counsel will provide legal services in connection with the issuance of TDHCA's bonds, notes, and other obligations of TDHCA to finance or refinance residential housing and multifamily housing developments and to refund prior bond issues.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 4:00 p.m. Central Standard Time July 20, 2003. No proposal received after the deadline will be considered. TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with respondents. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response. Law firms interested in submitting a proposal should contact Lucille Spillar, Legal Assistant, General Counsel's office, at 512/475-3726, 507 Sabine, Austin, TX 78701, for a complete copy of the RFP. Communication with any member of the board of directors, the executive

director, or TDHCA staff other than General Counsel's office concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200303717
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 17, 2003

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Houston-Galveston Area Council

Public Meeting Notice

Public Meeting on the Draft Transportation Public Involvement Plan (TPIP)

Tuesday, July 29, 2003

3555 Timmons Lane, 2nd Floor Conference Room A

6 p.m. - 7 p.m.

On Tuesday, July 29, 2003, the Houston-Galveston Area Council (H-GAC) will host a public meeting on the Draft Transportation Public Involvement Plan (TPIP). The TPIP provides a framework for the public involvement process that is used in the development of the Regional Transportation Plan, Transportation Improvement Program, Unified Planning Work Program, transportation-related air quality plans, and other appropriate transportation plans and projects. The public is encouraged to attend this important meeting and provide comments to H-GAC.

The 45-day public comment period on the Draft TPIP begins **Monday, June 30, 2003,** and all comments must be received by H-GAC no later than **5 p.m., Thursday, August 14, 2003.** Written comments may be submitted to Shelley Whitworth, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227, or shelley.whitworth@h-gac.com. Comments can also be faxed to 713-993-4508.

Copies of the Draft TPIP will be available at the meeting, as well as on the H-GAC Transportation Web site at **www.h-gac.com/transportation** or by calling (713) 499-6695. For more information, please contact Shelley Whitworth, Transportation Program Manager, at (713) 993-4571 or shelley.whitworth@h-gac.com.

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Shelley Whitworth at (713) 499-6695 to make arrangements.

TRD-200303733
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: June 18, 2003

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Texas Department of Human Services

Announcement of Available Funds and Requests for Proposals

SUMMARY: The Texas Department of Human Services (DHS) is pleased to announce the availability of funding for Refugee Social Service funds from the federal Office of Refugee Resettlement (ORR) in the Department of Health and Human Services in the areas of Houston, Dallas, and Fort Worth.

The Refugee Social Services Program provides employment and training services, education services including English as a Second Language, citizenship and adjustment preparation, GED, driver's education and orientation, and case management services including health and emergency outreach and cultural adjustment for healthy families. The Code of Federal Regulations (CFR) 45, Parts 400 and 401, give the state the authority to contract with public and private agencies for the provision of refugee social services. In Texas, DHS is the single state agency responsible for the administration of the Refugee Social Services Program. Within DHS, the Office of Immigration and Refugee Affairs is the entity responsible for the direct management of the Refugee Social Services Program.

Estimated funds available for the state under this announcement are $4,161,605.

Funds will be awarded on a competitive basis to public and private agencies that can demonstrate the greatest aptitude for effectively serving the target population. Charitable as well as Historically Underutilized Businesses, are encouraged to submit proposals for contracts. The target population for services includes persons admitted to the United States (U.S.) as refugees under Section 207 of the Immigration and Nationality Act (INA) or granted asylum under Section 208 of the INA. Eligibility also includes Cubans and Haitians under Section 501 of the Refugee Education Assistance Act of 1980 (P.L. 96-422); certain Amerasians from Vietnam who were admitted to the U.S. as immigrants under Section 584 of the Foreign Operations Export Financing and Related Programs Appropriations Act of 1998; and Section 107(b)(1)(A) of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386), insofar as it states that a victim of severe forms of trafficking shall be eligible for federal and certain state benefits and services to the same extent as a refugee. Eligible persons must possess original Immigration and Naturalization Services (INS) documents that verify admission status under one of the above laws, including persons admitted to the U.S. by the INS under Sections 207 and 208 of the INA.

APPLICATION DEADLINE: Six copies of the proposal(s) must be mailed or delivered, not faxed or electronically mailed, to: Mfon Ekpo, DHS, P.O. Box 149030, W-230, Austin, Texas 78714-9030 if by regular mail, or 701 W. 51st Street, W-230, Austin, Texas 78714-9030 if hand delivered or sent by overnight mail. Proposals must be received no later than 5:00 p.m. CDT on August 8, 2003. Proposals received after this date/time, faxed, or electronically mailed, will not be considered.

PROPOSAL EVALUATION AND FUNDING AWARD: The final selection of contractors shall be made by representatives of the Office of Immigration and Refugee Affairs, in accordance with applicable state and federal laws. The evaluation criteria and scores for each are contained on the Request for Proposal (RFP) document. A copy of the RFP will be sent to you upon written request submitted to Mfon Ekpo at the address listed above or via e-mail at fon.ekpo@dhs.state.tx.us. Issued in Austin, Texas on June 18, 2003.

TRD-200303741
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: June 18, 2003

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Open Solicitation for Crane County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (TAC) §19.2324, the Texas Department of Human Services (DHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for

Crane County, County #052. Medicaid nursing facility occupancy rates in **Crane County** exceeded the 90% occupancy threshold for six consecutive months during the period of **November 2002 through April 2003**. The county occupancy rates for each month of that period were: **94.7%, 92.0%, 92.6%, 93.8%, 95.9%, 91.2%**. In accordance with secondary selection process requirements contained in 40 TAC §19.2324(c), DHS will allocate up to **90** Medicaid beds to an eligible applicant that desires to construct a new nursing facility or to construct an addition to an existing nursing facility. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(c)(4) to Joe D. Armstrong, Texas Department of Human Services, Contract and Licensure Section, Long Term Care-Regulatory, Mail Code E-342, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DHS before the close of business July 28, 2003, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DHS will allocate Medicaid beds in accordance with 40 TAC §19.2324(c)(5). If no application for the secondary waiver process is received or if no applicant meets the requirements in this section, no further solicitation will occur.

TRD-200303718
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: June 17, 2003

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by CAREAMERICA LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in San Francisco, California.

Application to change the name of THE MOUNTBATTEN SURETY COMPANY INC., to FIRST SEALORD SURETY, INC., a foreign fire and/or casualty company. The home office is in Bala Cynwyd, Pennsylvania.

Application to change the name of COMBINED SPECIALTY INSURANCE COMPANY to VIRGINIA SURETY COMPANY, INC. a foreign fire and/or casualty Company. The home office is in Glenview, Illinois.

Application to change the name of CHARTER COUNTY MUTUAL INSURANCE COMPANY to UNITRIN COUNTY MUTUAL INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200303749
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 18, 2003

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Metropolitan Casualty Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting various flex percentages by territory and coverage: Bodily Injury (+30 to +71), Property Damage (+5 to +40), UMBI (+12), UMPD (+10), Medical Payments (+21), Personal Injury Protection (+26 to +87), Comprehensive (+35 to +102), and Collision (+19 to +62). The overall rate change is +6.8%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by July 14, 2003.

TRD-200303739
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 18, 2003

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Metropolitan Property and Casualty Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting various flex percentages by territory and coverage: Bodily Injury (+35 to +52), Property Damage (+29 to +42), UMBI (+34 to +45), UMPD (+50), Medical Payments (+48), Personal Injury Protection (+60 to +96), Comprehensive (+75 to +120), and Collision (+50 to +72). The overall rate change is +5%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by July 14, 2003.

TRD-200303740
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 18, 2003

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Third Party Administrator

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Tufts Benefit Administrators, Inc. DBA Tufts Health Plan, a foreign third party administrator. The home office is Waltham, Massachusetts.

Application for admission to Texas of Central States of Omaha Companies, Inc., a foreign third party administrator. The home office is Omaha, Nebraska.

Application for admission to Texas of Insurance Administrative Solutions, L.L.C. DBA Wakely and Associates, L.L.C., a foreign third party administrator. The home office is Clearwater, Florida.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200303750
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 18, 2003

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Texas Lottery Commission

Instant Game Number 373 "Triple Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 373 is "TRIPLE TRIPLER". The play style is a "key number match with 9X win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 373 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 373.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, $1.00, $2.00, $3.00, $5.00, $10.00, $50.00, $100, $300, $3,000, $27,000, 9X SYMBOL.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 373 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
9X	PRIZE
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$50.00	FIFTY
$100	ONE HUND
$300	THR HUND
$3,000	THR THOU
$27,000	27 THOU

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 373 - 1.2E

CODE	PRIZE
THR	$3.00
FIV	$5.00
NIN	$9.00
TEN	$10.00
EHT	$18.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $3.00, $5.00, $9.00, $10.00, $18.00, or $20.00.

H. Mid-Tier Prize - A prize of $27.00, $45.00, $90.00, or $100.

I. High-Tier Prize- A prize of $900, $3,000, or $27,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (373), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 373-0000001-000.

L. Pack - A pack of "TRIPLE TRIPLER" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be two (2) fanfold configurations for this game. Configuration A will show the front of ticket 000 and the back of ticket 124. Configuration B will show the back of ticket 000 and the front of 124.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TRIPLE TRIPLER" Instant Game No. 373 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner of the "TRIPLE TRIPLER" Instant Game is determined once the latex on the ticket is scratched off to expose 23 (twenty-three) play symbols. If the player matches any of the YOUR NUMBERS play symbols to any of the three WINNING NUMBERS play symbols the player will win the PRIZE shown for that number. If the player gets a 9X symbol under any of the YOUR NUMBERS symbols, the player will win 9 times the prize shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 23 (twenty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received or recorded by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Numbers play symbols on a ticket.

D. No more than one pair of duplicate non-winning prize symbols on a ticket.

E. The "9X" symbol will only appear on winning tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE TRIPLER" Instant Game prize of $3.00, $5.00, $9.00, $10.00, $18.00, $20.00, $27.00, $45.00, $90.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $90 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "TRIPLE TRIPLER" Instant Game prize of $3,000 or $27,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE TRIPLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TRIPLE TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TRIPLE TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,133,250 tickets in the Instant Game No. 373. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 373 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	410,570	12.50
$5	287,563	17.85
$9	123,201	41.67
$10	102,664	50.00
$18	82,118	62.51
$20	41,066	125.00
$27	30,807	166.63
$45	17,122	299.80
$90	4,278	1,199.92
$100	6,244	822.11
$900	168	30,555.06
$3,000	2	2,566,625.00
$27,000	5	1,026,650.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.64. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 373 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 373, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200303679
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 16, 2003

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Instant Game Number 382 "Fast Tracks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 382 is "FAST TRACKS". The play style is "key number/symbol match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 382 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 382.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000, $25,000, DOLLAR SIGN SYMBOL, FLAG SYMBOL.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions will appear under each Play Symbol and each is printed in caption font in black ink in positive. The Play

Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 382 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
DOLLAR SIGN SYMBOL	AUTO
FLAG SYMBOL	DBLE
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$25,000	25 THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 382 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, $12.00, $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $200.

I. High-Tier Prize- A prize of $2,000, $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (382), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 382-0000001-000.

L. Pack - A pack of "FAST TRACKS" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the top page, tickets 002 and 003 on the next page, and so on, and tickets 248 and 249 will be on the last page. Please note the books will be in an A- B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FAST TRACKS" Instant Game No. 382 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FAST TRACKS" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) play symbols. If any of the player's designated YOUR NUMBERS match either designated WINNING NUMBER, the player will win the PRIZE indicated. If the player reveals a dollar sign ("$") symbol the player will win the indicated prize automatically. If the player reveals a "flag" symbol, the player will win double the indicated prize. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two Play) Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Numbers play symbols on a ticket.

D. No more than one pair of duplicate non-winning prize symbols on a ticket.

E. The "flag" doubler symbol will appear only on intended winning tickets as dictated by the prize structure.

F. The "flag" symbol will never appear more than once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "FAST TRACKS" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $12.00, $20.00 $25.00, $50.00, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "FAST TRACKS" Instant Game prize of $2,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FAST TRACKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FAST TRACKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FAST TRACKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in

these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,288,250 tickets in the Instant Game No. 382. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 382 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	1,941,790	7.87
$4	1,054,715	14.50
$5	152,855	100.02
$10	183,449	83.34
$12	61,153	250.00
$20	30,605	499.53
$25	30,582	499.91
$50	62,821	243.36
$200	17,153	891.29
$2,000	55	277,968.18
$25,000	15	1,019,216.67

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.32. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 382 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 382, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200303678
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 16, 2003

♦ ♦ ♦

Instant Game Number 407 "Cash Celebration"

1.0 Name and Style of Game.

A. The name of Instant Game No. 407 is "CASH CELEBRATION". The play style is a "match 3 of 9 with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 407 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 407.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $3.00, $6.00, $9.00, $18.00, $27.00, $100, $1,000, $3,000, BELL SYMBOL.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 407 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$6.00	SIX$
$9.00	NINE$
$18.00	EGHTN
$27.00	TWYSVN
$100	ONE HUND
$1,000	ONE THOU
$3,000	THR THOU
BELL SYMBOL	TRIPLE

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Figure 2: GAME NO. 407 - 1.2E

CODE	PRIZE
ONE	$1.00
THR	$3.00
SIX	$6.00
NIN	$9.00
EHT	$18.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $3.00, $6.00, $9.00, or $18.00.

H. Mid-Tier Prize - A prize of $27.00, $100, or $300.

I. High-Tier Prize- A prize of $3,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (407), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 407-0000001-000.

L. Pack - A pack of "CASH CELEBRATION" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top page, tickets 005 to 009 will be on the next page, and so on, and tickets 245 to 249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH CELEBRATION" Instant Game No. 407 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner of the "CASH CELEBRATION" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player matches 3 identical amounts, the player will win that amount. If the player matches 2 identical amounts and a bell symbol, the player will win triple that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly nine (9) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly nine (9) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine (9) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received or recorded by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more like play symbols on a ticket.

C. No more than 2 pairs of like play symbols on a ticket.

D. The tripler symbol will appear according to the prize structure and will only appear once on a ticket.

E. When the tripler symbol appears on a winning ticket, there will be no more than two like play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH CELEBRATION" Instant Game prize of $1.00, $3.00, $6.00, $9.00, $18.00, $27.00, $100, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $100 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CASH CELEBRATION" Instant Game prize of $3,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH CELEBRATION" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH CELEBRATION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASH CELEBRATION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,203,500 tickets in the Instant Game No. 407. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 407 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	2,424,588	8.33
$3	1,292,907	15.63
$6	161,567	125.05
$9	161,689	124.95
$18	80,814	250.00
$27	18,516	1,091.14
$100	4,278	4,722.65
$300	2,975	6,791.09
$3,000	41	492,768.29

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 407 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 407, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200303677

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 16, 2003

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Manufactured Housing Division

Notice of Administrative Hearing

Thursday, July 10, 2003, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Barbara's Berry Best Buy, Inc. dba Longhorn Manufactured Homes to hear alleged violations of Sections 6(m) (currently found at Chapter 1201.151 of the Occupations Code), Section 6(m)(1) (currently found at Chapter 1201.151(a) of the Occupations Code), Section 6(m)(3) (currently found at Chapter 1201.151(b) of the Occupations Code), Section 7(b) (currently found at Chapter 1201.101(b) of the Occupations Code), Section 7(c) (currently found at Chapter 1201.101(c) of the Occupations Code), Section 7(j)(1) (currently found at Chapter 1201.551(a)(a) of the Occupations Code), Section 7(j)(3) (currently found at Chapter 1201.551(a)(3) of the Occupations Code), Section 7(k) (currently found at Chapter 1201.552 of the Occupations Code), Section 8(b) (currently found at Chapter 1201.455 of the Occupations Code), Section 8(c) (currently found at Chapter 1201.453 of the Occupations Code), Section 8(d) (currently found at Chapter 1201.451 of the Occupations Code), Sections 14(f) and 14(j) (currently found at Chapters 1201.358, 1201.354, and 1201.354 of the Occupations Code), and Section 20(a) (currently found at Chapter 1201.153(a) and (b) of the Occupations Code) of the Act and Sections 80.54(b), 80.121(a)(1)(F), 80.123(b), 80.123(c), 80.131(b), 80.132(3), and 80.180 of the Rules by refusing to refund the deposits given by consumers within fifteen days of receiving written notice requesting the refund for homes that were in Respondents inventory, by selling/negotiating to sell two or more homes in a twelve month period without obtaining, maintaining, or possessing a valid retailer's and/or broker's license, by failing to give the proper notices and disclosures on a manufactured home that was sold by Respondent, by selling an uninhabitable home to a consumer, by selling a manufactured home without the appropriate, timely transfer of a good and marketable title, and by not complying with the initial reports and warranty order of the Director and not providing the Division with completed work orders. SOAH 332-03-3405. Department MHD2002001301-HB, MHD2002001442-RD, MHD2003000215-RD, MHD2003000679-RD, MHD2003001005-UR, MHD2003001017-UR, MHD2003001272-UR, and MHD2003001333-DT.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200303734
Timothy K. Irvine
Deputy Executive Director
Manufactured Housing Division
Filed: June 18, 2003

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Public Utility Commission of Texas

Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of SBC Texas's application filed with the Public Utility Commission of Texas (commission) on May 27, 2003 to withdraw services.

Docket Title and Number: Application of SBC Texas to Grandfather and Withdraw Internet Caller ID, Docket Number 27874.

Southwestern Bell Texas, L.P. doing business as SBC Texas (SBC Texas) has filed an application with the commission to withdraw Internet Caller ID service. SBC Texas's reason for withdrawing the service is that Internet Caller ID only works with Windows 95 and Windows 98. SBC Texas stated it would be prohibitive to upgrade and maintain Internet Caller ID to work on newer operating systems. Those customers using dial-up service have competitive alternatives to choose from. SBC proposed to grandfather all existing Internet Caller ID customers until the end of 2003 and to completely withdraw the service on December 31, 2003.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas, by July 18, 2003, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Docket Number 27874.

TRD-200303583
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2003

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on May 5, 2003, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Alexander Exchange for Expanded Local Calling Service, Project Number 27746.

The petitioners in the Alexander exchange request ELCS to the exchanges of Carlton, Dublin, Hico, and Stephenville.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 9, 2003. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 27746.

TRD-200303702
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2003

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on May 8, 2003, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Jackson Exchange for Expanded Local Calling Service, Project Number 27761.

The petitioners in the Jackson exchange request ELCS to the exchange of Tyler.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 14, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 27761.

TRD-200303703
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2003

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Public Notice of Interconnection Agreement

On June 12, 2003, Starlight Phone, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27948. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27948. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 15, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27948.

TRD-200303579
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2003

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Public Notice of Interconnection Agreement

On June 12, 2003, American Fiber Network, Inc. doing business as AFN, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27949. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27949. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 15, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27949.

TRD-200303580
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2003

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Public Notice of Interconnection Agreement

On June 12, 2003, Metro Teleconnect Companies, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27950. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27950. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 15, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27950.

TRD-200303581
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2003

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Public Notice of Interconnection Agreement

On June 12, 2003, Habla Comunicaciones, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval to adopt the rates, terms, and conditions of a previously-approved interconnection agreement adopted pursuant to the §252(e) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27951. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25951. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 15, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27951.

TRD-200303582
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2003

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Public Notice of Interconnection Agreement

On June 13, 2003, Mid-Plains Rural Telephone Cooperative, Incorporated and WWC Texas RSA Limited Partnership, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27952. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27952. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27952.

TRD-200303704
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2003

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Public Notice of Interconnection Agreement

On June 13, 2003, Mid-Plains Rural Telephone Cooperative, Incorporated and Dobson Cellular Systems, Incorporated, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27953. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27953. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27953.

TRD-200303705
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2003

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Request for Proposals for the Provision of Call Center and Fulfillment Services for the Texas Electric Choice Campaign

The Public Utility Commission of Texas (commission or PUC) is issuing a Request for Proposals (RFP) for the provision of call center and fulfillment services for the Texas Electric Choice Campaign. This RFP is being undertaken pursuant to the commission's statutory responsibility as provided for in the Public Utility Regulatory Act (PURA) §39.902(a) and (c).

To be considered, the proposals must arrive at the PUC on or before 3:00 p.m., C.S.T., Monday, July 14, 2003. The vendor will be designated by the commission on or before July 21, 2003 and must be prepared to commence service on August 1, 2003.

Entities that meet the definition of a historically underutilized business (HUB), as defined in Chapter 2161, Texas Government Code, §2161.001, are encouraged to submit a proposal.

Project Description. This RFP contains two basic services for which a vendor is needed: (1) services necessary to set up and operate a call center to handle inbound inquiries about electric choice in Texas, including, but not limited to, all equipment, labor, programming costs, and customer service representative training, and (2) services necessary to set up and provide fulfillment of educational materials in response to customer inquiries received via telephone, mail, and the Internet. The commission will provide the vendor with the use of its toll-free 1-866-797-4839 telephone number and the Texas Electric Choice materials to be distributed to Texas customers upon request.

Price. The budgeted amount for this contract is $350,000.

Selection Criteria. A proposal will be selected based on the ability of the proposer to provide the best value to the state. In addition to the proposer's ability to carry out all of the requirements contained in this RFP and demonstrated competence and qualifications of the proposer, the reasonableness of the proposed fee will be considered. A team of staff evaluators will review all the proposals submitted. A complete description of selection criteria is set forth in the RFP. Proposers will be notified in writing of the selection.

Requesting the Proposal. A complete copy of the RFP may be obtained by written request to Lisa Trueper, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by fax (512) 936-7058, or by email at lisa.trueper@puc.state.tx.us. The RFP will be available Friday, June 27, 2003 and will be mailed on that date to all parties who have requested a copy and to a list of prospective proposers prepared by PUC staff. You may also download the RFP from the PUC website at www.puc.state.tx.us, under Hot Topics, and from the Electronic Business Daily website sponsored by the Texas Department of Economic Development at www.marketplace.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received no later than 3:00 p.m. on Monday, July 14, 2003, in the Public Utility Commission of Texas Central Records, Room G-113, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Ave., Austin, Texas 78701. Proposals received in Central Records after 3:00 p.m. on Monday, July 14, 2003, will not be considered. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays. Regardless of the method of submission of the proposal, the commission will rely solely on the time/date stamp of Central Records in establishing the time and date of receipt. Proposals should be filed under Project 27955.

TRD-200303720
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 17, 2003

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Request for Proposals to Select Vendor to Provide Marketing Services for the Texas Electric Choice Public Education Campaign

The Public Utility Commission of Texas (commission or PUC) is issuing a Request for Proposals to select a vendor to provide marketing services for the Texas Electric Choice public education campaign. This Request for Proposals (RFP) is issued pursuant to the commission's authority under Texas Utilities Code, Title II, Chapter 39, Subchapter Z, §39.902(a) and (c).

To be considered, the proposals must arrive at the PUC on or before 3:00 p.m., C.S.T., Monday, July 21, 2003. The vendor will be designated by the commission on or before July 25, 2003 and must be prepared to commence service on August 1, 2003.

Entities that meet the definition of a historically underutilized business (HUB), as defined in Chapter 2161, Texas Government Code, §2161.001, are encouraged to submit a proposal.

Project Description. The PUC is responsible for educating the public about electric deregulation and to offer them the tools to help make informed choices of electric services and retail electric providers. This RFP is for the selection of the marketing services agency that will assist the PUC in the strategy and execution of the marketing services for the Texas Electric Choice public education program. The focus of the marketing effort will be on an education partner program designed to work with community influencers to distribute information on electric competition to their constituents and to drive response to the Texas Electric Choice website and answer center. Tasks to be performed include: (1) development of a creative strategy; (2) development of a marketing work plan; (3) utilization of current research; (4) implementation of the Education Partner Campaign; and (5) project management.

Price. The budgeted amount for this contract is $400,000. The initial $100,000 will be budgeted solely for the month of August and cannot

be used to pay for any work preformed or for items purchased after September 1, 2003. The remaining $300,000 is budgeted for Fiscal Year 2004 (September 1, 2003 through August 31, 2004) and will be allocated for all fees, collateral and promotional item production, postage and distribution of any materials, and any media buying or database services.

Selection Criteria. A proposal will be selected based on the ability of the proposer to provide the best value to the state. In addition to the proposer's ability to carry out all of the requirements contained in this RFP and demonstrated competence and qualifications of the proposer, the reasonableness of the proposed fee will be considered. Proposals for amounts exceeding the budget will be rejected as non-responsive. A team of staff evaluators will review all the proposals submitted. A complete description of selection criteria is set forth in the RFP. Proposers will be notified in writing of the selection.

Requesting the Proposal. A complete copy of the RFP may be obtained by written request to Lisa Trueper, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by fax (512) 936-7058, or by email to lisa.trueper@puc.state.tx.us. The RFP will be available Friday, June 27, 2003 and will be mailed on that date to all parties who have requested a copy and to a list of prospective proposers prepared by PUC staff. You may also download the RFP from the PUC website at www.puc.state.tx.us, under Hot Topics, and from the Electronic Business Daily website sponsored by the Texas Department of Economic Development at www.marketplace.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received no later than 3:00 p.m. on Monday, July 21, 2003, in the Public Utility Commission of Texas Central Records, Room G-113, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Ave., Austin, Texas 78701. Proposals received in Central Records after 3:00 p.m. on Monday, July 21, 2003 will not be considered. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays. Regardless of the method of submission of the proposal, the commission will rely solely on the time/date stamp of Central Records in establishing the time and date of receipt. Proposals should be filed under Project Number 27954.

TRD-200303708
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2003

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Texas A&M University, Board of Regents

Request for Proposal

The Texas A&M University System (A&M System) requests proposals from professional firms interested in representing the A&M System and its members in certain tax matters.

Description: The A&M System is composed of 19 members (including 9 institutions, 1 health science center, 8 state agencies and 1 System Administrative and General Office) supported by legislative appropriations, tuition, fees, income from auxiliary enterprises, the Permanent University Fund, the Available University Fund, grants, gifts, sponsored research and other sources of revenues, all of which may be impacted by the Internal Revenue Code and Internal Revenue Service Treasury Regulations. For assistance with such issues, the A&M System will engage outside counsel for review of and advice regarding tax matters related to higher education including, but not limited to, the following: unrelated business income tax; retirement programs; tax matters regarding compensation issues; nonresident alien tax issues; and personal income tax issues as they relate to donors.

The A&M System invites proposals in response to this Request for Proposal (RFP) from qualified firms for the provision of such legal and tax services (for the period September 1, 2003 through August 31, 2004) under the direction and supervision of the A&M System Office of Budgets and Accounting.

Responses: Responses to this RFP should include at least the following information:

* a description of the firm's or attorney's qualifications for performing the legal services, including the firm's past experience in tax-related matters and retirement plans as they relate specifically to institutions of higher education;

* the names and experience of the attorneys who will be assigned to work on such matters;

* the availability of the lead attorney and others assigned to the project

* a description of the firm's efforts to encourage and develop the participation of minorities and women in the provision of the firm's and legal services generally, and tax matters in particular;

* fee information (either in the form of hourly rates for each partner, associate, paralegal and technical advisor who may be assigned to perform services to the A&M System, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses;

* a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner;

* representation that should it be selected by the A&M System to provide legal assistance in tax matters, the firm will enter into the attached "Outside Counsel Agreement."; and

* confirmation of willingness to comply with policies, directives and guidelines of the A&M System and the Attorney General of the State of Texas. Qualified firms must be able to exhibit compliance with House Bill No. 1, 77th Legislature, Regular Session, Article IX, Section 6.26 concerning matters against the State of Texas or any of its agencies.

Format and Person to Contact: Three copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail or delivered in person, marked on the envelope **"Response to Request for Proposal"** and addressed to:

B. J. Crain

Associate Vice Chancellor for Budgets and Accounting

Office of Budgets and Accounting

The Texas A&M University System

John B. Connally Building

301 Tarrow, Room 309

College Station, Texas 77840-7896

Evaluation: Proposals sent in response to this RFP will be evaluated in light of several criteria. The criteria are expertise, availability of a lead attorney, prior experience in handling tax matters related to higher education, procedures for providing timely and cost-effective services, and reasonableness of fees. Although the fee structure and overall cost

of this representation will be an extremely important factor in evaluating proposals submitted in response to this RFP, the successful firm(s) will clearly demonstrate exceptional expertise and experience with the federal tax matters made the subject of this RFP.

Deadline for submission of Response: All proposals must be received by the Office of Budgets and Accounting of the A&M System at the address set forth above not later than 5:00 p.m., July 15, 2003. We reserve the right to consider late proposals but cannot guarantee their consideration.

TRD-200303549
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: June 12, 2003

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The University of Texas System

Notice of Contract Award

Pursuant to §2254.030, Government Code, The University of Texas Southwestern Medical Center at Dallas (UT Southwestern) hereby gives notice of award of a consulting services contract to HealthLink, Inc., 3800 Buffalo Speedway, Suite 550, Houston, TX 77098 (HLI). HLI will provide assistance in the development of a strategic plan for UT Southwestern's Department of Information Resources. The contract was issued pursuant to an RFP issued by UT Southwestern.

The total contract amount is $150,000. Due dates for contract deliverables vary and are set out in the schedule contained in the contract. Final deliverable is due July 21, 2003.

TRD-200303577
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: June 13, 2003

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Texas Workforce Commission

Notice-Apprenticeship Funding Available

Notice of Available Funds for Fiscal Year 2004 for Apprenticeship Training Programs from the Texas Workforce Commission under the Texas Education Code, Chapter 133.

Filing Authority. The notice of available funds for apprenticeship training programs is authorized under the Texas Education Code, Chapter 133.

Eligible Applicants. The Texas Workforce Commission is requesting preliminary contact-hour estimates from public school districts and state post-secondary institutions for related (apprentice) instruction classes for apprenticeship training programs under Texas Education Code, Chapter 133.

Description. Funds will be available for Fiscal Year 2004 (September 1, 2003 - August 31, 2004) to provide funds under the Texas Education Code, Chapter 133. The purpose of the funds is to help pay for classroom instruction for related (apprentice) instruction classes of apprenticeship training programs registered with the Bureau of Apprenticeship and Training (BAT). The planning estimate for Fiscal Year 2004 is $1,678,146 for apprenticeship programs from the Texas Workforce Commission. Pending approval of funding formulas on June 27, 2003 by the Texas Council on Workforce and Economic Competitiveness, five percent of the total grant funds will be set aside for apprenticeship programs and occupations within apprenticeship programs that did not receive Chapter 133 funds during the previous biennium (September 1, 2001 to August 31, 2003).

Qualifications for Funding. To qualify for funding: 1) each apprenticeship training program or occupation within a program must be certified and registered by the BAT, U.S. Department of Labor, no later than August 1, 2003; 2) each apprentice must be registered with the BAT in Texas on or before September 1, 2003; 3) each apprentice must be a full-time paid employee in the private sector in Texas; 4) the number of related instruction hours per class must be certified by the BAT as verified in the program standards of the apprenticeship program; 5) a public school district or state postsecondary institution must act as fiscal agent for the funds in accordance with a contract between the apprenticeship program sponsor and the district or institution; and 6) the related instruction (apprentice) class must start in September 2003 and conduct its fourth class meeting no later than October 4, 2003.

Dates of Program. Each class may not start before September 1, 2003, and must end on or before August 31, 2004.

Planning Allocation of Funds. The statewide total number of estimated contact hours that are submitted to the Texas Workforce Commission will be divided into the amount of funds available to determine a preliminary contact-hour rate, not to exceed $4.00 per contact hour. Planning allocations are made to eligible applicants based on the preliminary contact-hour rate multiplied by the number of estimated contact hours submitted to the Texas Workforce Commission.

Use of Funds. Funds can only be used for related instruction costs such as instructor salaries, instructional supplies, instructional equipment, and other operating expenses. No more than 15 percent may be used by the eligible applicants for administrative purposes, such as supervisory and/or secretarial salaries, office supplies, or travel.

Requesting the Forms to Submit Preliminary Estimated Contact Hours. An information package explaining the process for submitting preliminary contact-hour estimates and the process for submitting an application may be obtained by contacting the Apprenticeship Support Program at (512) 463-9767, e- mailing beverly.donoghue@twc.state.tx.us, or writing the Apprenticeship Support Program, Texas Workforce Commission, 101 East 15th Street, Room 432T, Austin, Texas 78778-0001.

Further Information. For additional information, please contact Beverly Donoghue, Apprenticeship Support Coordinator, Texas Workforce Commission, at (512) 463-9767.

Deadline for Receipt of Preliminary Contact-Hour Estimates. The Texas Workforce Commission, Apprenticeship Support Program, must receive preliminary contact-hour estimates for Fiscal Year 2004 apprenticeship training programs no later than 5:00 p.m., Thursday, July 3, 2003, to be considered for funding.

TRD-200303753
John Moore
General Counsel
Texas Workforce Commission
Filed: June 18, 2003

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How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
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