# TEXAS REGISTER

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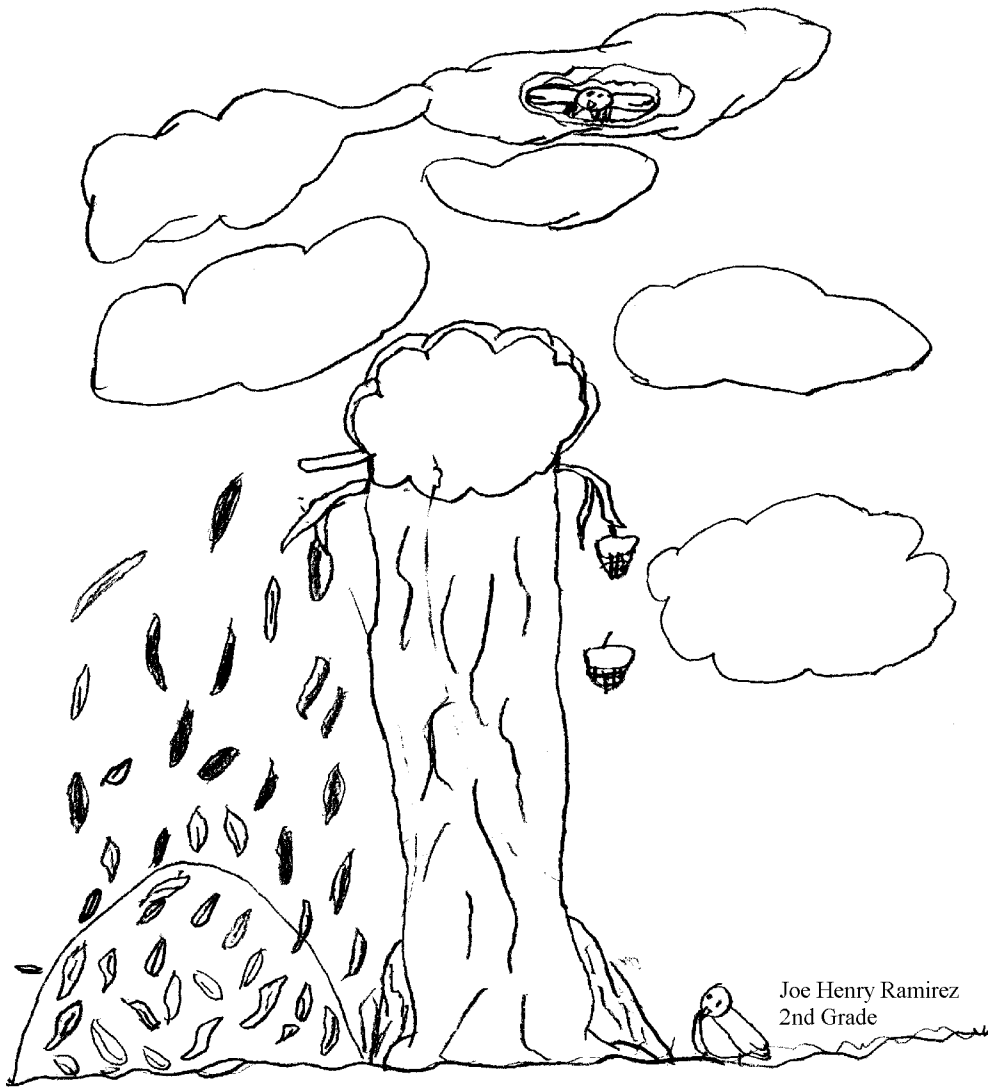

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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# IN THIS ISSUE

## *WITHDRAWN RULES*



## *ADOPTED RULES*



## *RULE REVIEW*

# 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.
http://www.sos.state.tx.us/texreg

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 October 14, 2003**

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2005, Doris A. Couch of Burleson (replacing Kathryn Boyd of Georgetown who resigned).

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2009, Richard C. Adam, D.P.M. of San Antonio (replacing Jimmie Lummus of San Angelo whose term expired).

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2009, Paul Kinberg, D.P.M. of Dallas (replacing Donald Falknor of Houston whose term expired).

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2009, Matthew Washington of Missouri City (replacing Barbara Young of Bellaire whose term expired).

Appointed as Judge of the 416th Judicial District Court, Collin County, pursuant to SB 1551, 78th Legislature, Regular Session, for a term until the next General Election and until his successor shall be duly elected and qualified, John Christopher Oldner of Frisco.

Appointed to the State Cemetery Committee for a term to expire February 1, 2009, Scott Philen Sayers, Jr. of Austin (replacing Martin Allday of Austin whose term expired).

Appointed to the Department of Information Resources for a term to expire February 1, 2009, Richard "Casey" Hoffman of Austin (replacing Rolf Haberecht of Dallas whose term expired).

Appointed to the Texas State Board of Medical Examiners, pursuant to SB 287, 78th Legislature, Regular Session, for a term to expire April 13, 2009, Annette P. Raggette of Austin.

Appointed to the Texas State Board of Medical Examiners, District Two Review Committee for a term to expire January 15, 2008, Janet Tornelli-Mitchell, M.D. of Dallas (replacing H. Jane Chihal of Carrollton whose term expired).

Appointed to the Texas Workforce Commission for a term to expire February 1, 2005, Ronald Gene Congleton of Rockwall (replacing Terrence O'Mahoney of Austin who resigned).

Appointed to the Texas Commission on Human Rights for a term to expire September 24, 2009, Nila T. Wipf of Harlingen (replacing David Manning of Fort Worth whose term expired).

Appointed as Inspector General for Health and Human Services, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2005, Brian Glenn Flood of Allen.

**Appointments for October 15**

Appointed to the Texas Historical Commission for a term to expire February 1, 2009, John Liston Nau, III of Houston (replacing J.P. Bryan of Houston whose term expired).

Designating John Liston Nau, III of Houston as Chairman of the Texas Historical Commission for a term at the pleasure of the Governor.

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2009, Dory A. Wiley of Dallas (replacing Brenda Jackson of Dallas whose term expired).

Appointed to the State Board for Educator Certification for a term to expire February 1, 2009, Ruby Sciore of Austin (replacing Mary Rucker of Nassau Bay whose term expired).

Appointed to the Texas A&M University System Board of Regents for a term to expire February 1, 2009, Bill Jones of Austin (replacing Anne Armstrong of Armstrong whose term expired).

**Appointments for October 20, 2003**

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2009, Peter L. Pfeiffer of Austin (replacing Chao-Chiung Lee of Bellaire whose term expired).

Designating Kathleen Hartnett White of Valentine as Presiding Officer of the Texas Commission on Environmental Quality for a term at the pleasure of the Governor. Ms. White will replace Robert Huston of Austin as Presiding Officer.

Rick Perry, Governor

TRD-200306967

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## Appointments

**Appointments for October 17, 2003**

Appointed to the Texas Commission on Environmental Quality for a term to expire August 31, 2009, Larry Ross Soward of Austin (replacing Robert Huston of Austin whose term expired).

**Appointments for October 21, 2003**

Appointed to the Texas Historical Commission for a term to expire February 1, 2009, Albert F. (Boo) Hausser of San Antonio (replacing Linda Valdez of San Antonio whose term expired).

Appointed to the Texas Historical Commission for a term to expire February 1, 2009, Bob Bowman of Lufkin (replacing Clinton White of Wharton whose term expired).

Appointed to the Texas Historical Commission for a term to expire February 1, 2009, Thomas E. Alexander of Fredericksburg (replacing Carl McQueary of Austin whose term expired).

Appointed to the Texas Mutual Insurance Company Board of Directors for a term to expire July 1, 2009, Sandra K. Thomas of Dallas (replacing Brenda Pejovich of Dallas whose term expired).

Appointed to the State Cemetery Committee for a term to expire February 1, 2007, John Emmett Lyle of Houston (replacing George Christian of Austin who is deceased).

Appointed to the Texas Council for Developmental Disabilities for terms to expire February 1, 2009, Melonie Caster of Bedford.

Appointed to the Texas Council for Developmental Disabilities for terms to expire February 1, 2009, Diana Kern of Cedar Creek.

Appointed to the Texas Council for Developmental Disabilities for terms to expire February 1, 2009, Amy Baxter Ley of Euless.

Appointed to the Texas Council for Developmental Disabilities for terms to expire February 1, 2009, Vickie J. Mitchell of Montgomery.

Appointed to the Texas Council for Developmental Disabilities for terms to expire February 1, 2009, Dana Smith Perry of Brownwood.

Appointed to the Texas Council for Developmental Disabilities for terms to expire February 1, 2009, Richard Arthur Tisch of Spring.

Appointed to the Texas Council for Developmental Disabilities for terms to expire February 1, 2009, Raul Trevino, Jr. of Mission.

Rick Perry, Governor

TRD-200306981

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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.

## Opinion

**Opinion No. GA-0116**

The Honorable Rodney Ellis

Chair, Government Organization Committee

Texas State Senate

P.O. Box 12068

Austin, Texas 78711-2068

Mr. Jose Montemayor

Commissioner of Insurance

Texas Department of Insurance

P.O. Box 149104

Austin, Texas 78714-9104

Re: Constitutionality of sections 2A and 2B of article 21.74, Texas Insurance Code, which establish a "Holocaust Registry" within the Texas Department of Insurance; require certain insurers to file particular information with the Department; and authorize the imposition of sanctions for failure to do so (RQ-0074-GA)

**S U M M A R Y**

On the basis of the United States Supreme Court's decision in *American Insurance Association v. Garamendi*, 123 S.Ct. 2374 (2003), article 21.74 of the Texas Insurance Code interferes with the President's conduct of foreign affairs, and is thus preempted by the United States Constitution.

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

TRD-200306978
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: October 22, 2003

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## Request for Opinions

**RQ-0114-GA**

**Requestor:**

Mr. Vernon M. Arrell, Commissioner

Texas Rehabilitation Commission

4900 North Lamar Boulevard

Austin, Texas 78751-2399

Re: Whether the Texas Rehabilitation Commission must seek reimbursement for benefit replacement pay erroneously paid to ineligible employees (Request No. 0114-GA)

**Briefs requested by November 20, 2003**

**RQ-0115-GA**

**Requestor:**

The Honorable Joe Warner Bell

Trinity County Attorney

P.O. Box 979

Groveton, Texas 75845

Re: Whether a city council may prohibit deputy constables from using the municipal jail as a prisoner holding facility for various purposes (Request No. 0115-GA)

**Briefs requested by November 20, 2003**

**RQ-0116-GA**

**Requestor:**

Mr. Robert J. Cook

Executive Director

Texas Parks and Wildlife Department

4200 Smith School Road

Austin, Texas 78744-3291

Re: Whether a local governmental entity, including a home-rule municipality may prohibit hunting when the Texas Parks and Wildlife Commission permits hunting in that locality (Request No. 0116-GA)

**Briefs requested by November 20, 2003**

**RQ-0117-GA**

**Requestor:**

Mr. Douglas B. Foster

Interim Commissioner

Texas Savings and Loan Department

2601 North Lamar, Suite 201

Austin, Texas 78705

Re: Whether in the Texas Mortgage License Act, Finance Code, §156.209(c), the words "not later than" modify "shall set" or "hearing" (Request No. 0117-GA)

**Briefs requested by November 20, 2003**

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

TRD-200306966
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: October 21, 2003

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# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 1. GENERAL LAND OFFICE

### CHAPTER 3. GENERAL PROVISIONS

### SUBCHAPTER C. SERVICES AND PRODUCTS

**31 TAC §3.31**

The General Land Office (GLO) amends on an emergency basis §3.31(b)(7)(D) related to Fees. The GLO has identified that this fee, required for the filing of each deed, title opinion, or other piece of evidence needed to satisfy the commissioner of the good faith claimant's status, as an onerous burden to assess persons' whose title to current property interests are called into question under a vacancy application filed in accordance with §51.176 Texas Natural Resources Code and must be repealed in order to prevent imminent peril to the public welfare.

The amendment is repealing this subparagraph on an emergency basis due to the imminent peril to public welfare caused by the onerous burden to assess and collect from each person submitting a good faith claimant status for a vacancy application filed with the GLO. In accordance with §51.178, a person who avers that they have occupied, or used, or previously occupied or used or whose predecessors in interest have occupied or uses the land in question under a filed vacancy application under §51.176 Texas Natural Resources Code, for purposes other than exploring for or removing oil, gas, sulphur, or other minerals and geothermal resources and has, had or whose predecessors in interest have had the land in question enclosed or within definite boundaries recognized in the community and in possession for a period of at least ten years with a good faith belief that the vacancy was included with the boundaries of a survey or surveys that were previously titled awarded or sold under circumstances that would have vested title in the property in question may file an application for good faith claimant status with the GLO. The person filing a good faith claimant status application must provide documentation to the GLO to support their claim. Section 3.31(a)(7)(D) requires that for each piece of documentation filed the GLO must assess a $25.00 filing fee. This can result in the assessment of a large fee for a property owner whose title is called into question under a vacancy application. This places an onerous burden on the property owner who is trying establish a preferential right to the land in question. This emergency amendment of §3.31(a)(7)(D) will eliminate this onerous burden of assessing and collecting this fee against these property owners.

Section 3.31(a)(7)(D) is amended on an emergency basis under the Texas Natural Resources Code §51.174, which provides the GLO with the authority to adopt rules necessary and convenient to administer the subchapter.

*§3.31. Fees.*

(a) General.

(1) Form of payment. Fees may be paid by cash, check, or other legal means acceptable to the General Land Office. Payment by means of electronic funds transfer may be required by Texas Government Code §404.095, §9.51 of this title (relating to Royalty and Reporting Obligations to the State), or by other chapters of this title.

(2) Time for payment. Payment is generally required in advance of issuance of permits, leases and other documents and/or delivery of services and/or materials by the General Land Office.

(3) Dishonor or nonpayment by other means. In the event a fee is not paid due to dishonor, nonpayment, or otherwise, the General Land Office shall have no further obligation to issue permits, leases and other documents and/or provide services and/or materials to the permittee, lessee, or applicant.

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

(1) Cost of land title documents.

(A) Preparation of each patent or deed of acquittance: $50.

(B) Filing fee, original field notes: $25.

(C) Filing fee, corrected field notes: no charge.

(D) Filing fee, other instruments required by law to be filed with the General Land Office or accepted for filing by the General Land Office: $25 per instrument.

(E) recording fee per document, per county: the greater of $10 or the actual amount charged by the county clerk.

(2) Certificates of facts:

(A) Narrative certificates of fact consisting of all data from the inception of chain of title to the date of perfection of title and mineral history in paragraph form, short form certificate of fact (consisting of original award date, patent, deeds of acquittance, classification, current mineral history) and supplemental or limited certificates of fact (consisting of specific information or start date for history of a specific tract land):

*(i)* mineral classified land:

*(I)* first file: $100;

*(II)* each additional file: $10;

*(ii)* non-mineral classified land:

*(I)* first file: $75;

*(II)* each additional file: $10.

(B) Spanish documents: $50 per document, in addition to fees due under §1.3(b)(2)(A)(i) and (ii).

(3) Certified and non-certified classification letters:

(A) Certified classification letter:

*(i)* first file: $20;

*(ii)* each additional file: $10;

(B) Non-certified classification letter: no charge.

(4) Maps and sketches:

(A) Official maps: $15 per map.

(B) Sketches (blueline and large format copies); per linear foot: $2.00.

(C) Working sketch, per hour ($50 minimum): $20.

(D) Digitizally reproduced archival map collection up to 36 inches (large format copies): $15 per map.

(E) Digitizally reproduced archival map collection on special printer paper.

*(i)* 48 inches or less: $20 per map plus $8.00 shipping and handling;

*(ii)* greater than 48 inches: $40 per map plus $8.00 shipping and handling.

(5) Digital mapping (GIS):

(A) GIS maps printed on special printer paper:

*(i)* 8.5 inch by 11 inch: $7.00;

*(ii)* 30 inch by 36 inch: $19;

*(iii)* 36 inch by 48 inch: $27.

(B) Computer charges for GIS data placed on CD-ROM:

*(i)* cost of disk: $11;

*(ii)* programming personnel charge: $26 per hour;

*(iii)* computer resource charge: $1.50 per minute.

(C) Postage and handling: $15 per package.

(6) Spanish translations:

(A) Original translations: $.15 per word.

(B) Copies of previously translated Spanish or Mexican titles: $2.00 per page.

(7) Vacancies:

(A) Application fee: $150.

(B) Filing fee for original field notes: $25.

(C) Affidavit filing fee: $25.

~~[(D) Each deed, title opinion, or other piece of evidence needed to satisfy the commissioner of claimant's status, other than those filed in a contested case administrative proceeding: $25.]~~

(8) Appraisal fees. Appraisal fees are charged for appraisals required by applications for deeds of acquittance and vacancies:

(A) First tract: $500.

(B) Each additional tract, same vicinity, same characteristics, and same owner: $50.

(C) If not listed above, or if 10 or more tracts are to be appraised at the same time, the fee may be negotiated by the General Land Office.

(9) Duplication fees--For purposes of this section the term Archival Records is defined as records maintained in the Archives and Records Division of the Texas General Land Office. The Archives and Records Division reserves the right to deny duplication of any document or map considered too fragile or brittle to safely copy. In addition, the Archives and Records Division reserves the right to specify with method(s) or reproduction may be used. Archival records for all original records affecting land titles, including original land grant files, Spanish Collection materials, school land and scrap files:

(A) Black and white photocopies and microfilm copies, per page:

*(i)* 8.5 inch by 11 inch: $1.00;

*(ii)* 8.5 inch by 14 inch: $1.00;

*(iii)* 11 inch by 17 inch: $2.00.

(B) Color photocopies, per page:

*(i)* 8.5 inch by 11 inch: $2.00;

*(ii)* 8.5 inch by 14 inch: $2.00;

*(iii)* 11 inch by 17 inch: $3.00.

(C) Blueline and large format copies: $15.

(D) Recorded media:

*(i)* VCR tapes, each: $15;

*(ii)* Audio cassettes, each: $7.50;

*(iii)* Raw field videos (VCR tape provided by requesting party, minimum one minute):

*(I)* First minute: $25;

*(II)* Each additional minute: $15.

(E) Photo processing (black and white only):

*(i)* 10 inch by 10 inch internegative: $6.00;

*(ii)* 10 inch by 10 inch contact print: $5.00;

*(iii)* 11 inch by 14 inch enlargement: $8.00;

*(iv)* 16 inch by 20 inch enlargement: $12.

(10) Genealogy search:

(A) Per name: $5.00.

(B) Field notes research, per quarter hour (minimum $10): $10.

(C) Other research of the official records of the General Land Office, per hour (minimum 1/2 hour): $25.

(11) Mailing fees:

(A) Mailing tubes, each: $1.75.

(B) Registered mail, each item: $5.50.

(C) Handling and preparation for mailing, each item: $1.00.

(12) Certification:

(A) Individual instruments or maps: $2.00.

(B) Contents of complete files, each file: $25.

(C) Copy of official Spanish translations, each: $25.

(13) Publications:

(A) Abstract volume (on microfiche): $12.50.

(B) Abstract volume supplement (hard copy and on microfiche): $10.

(14) Submerged lease data:

(A) Annual subscription rate: $300.

(B) Monthly rate: $25.

(C) Single copy, subscriber: $37.50.

(D) Single copy, non-subscriber: $75.

(E) Energy information service, per year: $180.

(F) Magnetic tape, per tape: $165.

(15) Geophysical and geochemical exploration:

(A) Non-Relinquishment Act lands:

*(i)* permit application filing fee: $100.

*(ii)* exploration and surface/bottom damage fees for unleased tracts in bays, other tideland areas, and the Gulf of Mexico.

*(I)* high velocity energy sources:

(-a-) $5.00 per acre in bays and other tideland areas;

(-b-) $2.00 per acre in the Gulf of Mexico;

*(II)* low velocity energy sources:

(-a-) $2.50 per acre in bays and other tideland areas;

(-b-) $1.00 per acre in the Gulf of Mexico;

*(III)* other exploration techniques: negotiable;

*(iii)* surface damage fees for unleased uplands:

*(I)* vibroseis: $2.50 per acre;

*(II)* high velocity energy sources: $5.00 per acre;

*(III)* gravity meter and/or magnetometer: fair market value, but not less than $2.50 per acre;

*(IV)* other exploration techniques: negotiable.

(B) Relinquishment Act lands:

*(i)* permit application filing fee: $100;

*(ii)* all fees for actual surface damages to personal property, improvements, livestock, and crops on unleased Relinquishment Act lands, if any, are to be negotiated with the surface owner. Any fees in excess of those attributable to the types of surface damages listed in this paragraph must be shared equally with the state.

(16) Miscellaneous services and fees:

(A) In-kind contract maintenance fee. Processing and accounting for in-kind oil, gas, and other related product contracts, from purchaser of state-owned products: per barrel delivered: $.05; per MMBTU delivered: $.03.

(B) Relinquishment Act lease processing fee: $100.

(C) highway right-of-way lease processing fee, including preparation of lease: $100.

(D) pooling application processing fee, including preparation and filing of pooling agreements: $100.

(E) oil, gas, and mineral lease application and filing fee, including processing, lease preparation, and filing of any oil, gas, or mineral lease not subject to other processing or nomination fees: $100.

(F) tract nomination fee, oil, gas, or mineral sealed bid lease sale fee: $100.

(G) prospect permit filing fee: $50.

(H) insufficient check fee (for each check returned): $25.

This agency hereby certifies that the emergency adoption 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 October 15, 2003.

TRD-200306763
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective Date: October 15, 2003
Expiration Date: February 12, 2004
For further information, please call: (512) 305-9129

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. MEDICAID REIMBURSEMENT RATES

### SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

**1 TAC §355.5902**

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 §355.5902, to remove the hourly payment rate for required annual and other assessments performed by an agency registered nurse for 1929(b) clients participating in the Consumer Directed Services payment option since the assessments will no longer be performed by the agency registered nurse, but will be performed by the Texas Department of Human Services (DHS) nurse. The proposal also removes the name of Family Care from the Primary Home Care title because Family Care services is just one of three services under the Primary Home Care program and does not need to be identified in the title.

Tom Suehs, Deputy Commissioner for Financial Services, 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. These changes reflect changes made to the Primary Home Care program by the DHS.

David Palmer, Deputy Chief Financial Officer, Business Management, has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the sections is that the reimbursement methodology for the Primary Home Care program will appropriately reflect changes made to the program by DHS to have the assessments for 1929(b) clients participating in the Consumer Directed Services payment option completed by a DHS nurse, therefore not requiring a payment rate for an agency registered nurse. In addition, the title will be changed to reflect the overall program name of Primary Home Care.

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 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 Carolyn Pratt at 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 the Department of Human Services or Carolyn Pratt at 512-685-3127 in HHSC Rate Analysis.

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; and §531.021(b), which establishes 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.

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

*§355.5902. Reimbursement Methodology for Primary Home Care [~~and Family Care Services~~].*

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) Cost reporting. Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures).

(1) All contracted providers must submit a cost report unless the number of days between the date the first Texas Department of Human Services client received services and the provider's fiscal year end is 30 days or fewer. 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 governmental entity. Requests to be excused from submitting a cost report must be received at the address specified in the letter mailed along with the cost report before the due date of the cost report.

(2) 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 reimbursement. HHSC excludes from reimbursement determination 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 which are necessary for the provision of services and are consistent with federal and state regulations.

(A) 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.

(B) 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 (A)(i) of this paragraph.

(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) Service support cost area. This includes field supervisors' salaries and wages, benefits, and mileage reimbursement expenses. This also includes building, building equipment, and operation and maintenance costs; administration costs; and other service costs. Administration expenses equal to $0.18 per Priority 1 unit of service are allocated to Priority 1. The administration costs remaining after this allocation are summed with the other service support costs.

(B) Nonpriority attendants cost area. This includes nonpriority attendants' salaries and wages, benefits, and mileage reimbursement expenses. This cost area is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(C) Priority 1 attendants cost area. This includes Priority 1 attendants' salaries and wages, benefits, and mileage reimbursement expenses. This cost area is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(2) Recommended reimbursement by cost area. For the service support cost area described in paragraph (1)(A) of this subsection the following is calculated:

(A) Projected costs. Each provider's total allowable costs, excluding depreciation and mortgage interest, per unit of service are projected from each provider agency's reporting period to the next ensuing reimbursement period, as described in §355.108 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. Reimbursement may be adjusted where new legislation, regulations, or economic factors affect costs as specified in §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(B) Projected cost per unit of service. To determine the projected cost per unit of service for each provider agency, the total projected allowable costs for the service support cost area are divided by total units of service, including nonpriority services, Priority 1 services, and STAR+PLUS services, in order to calculate the projected cost per unit of service.

(C) Projected cost arrays. All provider agencies' projected allowable costs per unit of service are rank ordered from low to high, along with each provider agency's corresponding total units of service.

(D) Recommended reimbursement for the service support cost area. The total units of service for each provider agency are summed until the median hour of service is reached. The corresponding projected expense is the weighted median cost component. The weighted median cost component is multiplied by 1.044 to calculate the recommended reimbursement for the service support cost area. The service support cost area recommended reimbursement is limited, if necessary, to available appropriations.

(3) Total recommended reimbursement.

(A) For nonpriority clients. The recommended reimbursement is determined by summing the recommended reimbursement described in paragraph (2) of this subsection and the cost area component from paragraph (1)(B) of this subsection.

(B) For Priority 1 clients. The recommended reimbursement is determined by summing the recommended reimbursement described in paragraph (2) of this subsection and the cost area component from paragraph (1)(C) of this subsection.

~~[(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 §355.101 of this title (relating to Introduction).

(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 HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 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 §355.107 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 §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(f) Factors affecting allowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 this title (relating to General Principles of Allowable and Unallowable Costs) and §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs).

(g) Reporting revenues. Revenues must be reported on the cost report in accordance with §355.104 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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306781

Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 424-6576

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# TITLE 16. ECONOMIC REGULATION

## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.5, Definitions; §25.471, General Provisions of Customer Protection Rules; §25.472, Privacy of Customer Information; §25.473, Non-English Language Requirements; the repeal of existing §25.474, Selection or Change of Retail Electric Provider; new §25.474, Selection of Retail Electric Provider; amendments to §25.475, Information Disclosures to Residential and Small Commercial Customers; §25.476, Labeling of Electricity with Respect to Fuel Mix and Environmental Impact; §25.477, Refusal of Electric Service; §25.478, Credit Requirements and Deposits; §25.479, Issuance and Format of Bills; §25.480, Bill Payment and Adjustments; §25.481, Unauthorized Charges; §25.482, Termination of Contract; §25.483, Disconnection of Service; §25.485, Customer Access and Complaint Handling; §25.491, Record Retention and Reporting Requirements; and new §25.493, Acquisition and Transfer of Customers from one Retail Electric Provider to Another, new §25.495, Unauthorized Change of Retail Electric Provider; and new §25.497, Critical Care Customers. In addition, the commission proposes a new standardized Critical Care Eligibility Determination Form to accompany §25.497. These amendments, new sections, repeal, and form are proposed under Project Number 27084.

The primary goal of this project is to review existing customer protection rules in light of the practical experience obtained since the opening of the competitive market. The proposed rules will provide adequate and appropriate protections for retail customers, while not requiring retail electric providers (REPs) to incur unnecessary compliance costs. These rules will reduce costs to market participants, reduce confusion for customers, and provide certainty in the competitive retail electric market in Texas.

Proposed amendments to §25.471, General Provisions of Customer Protection Rules, delete several definitions that are already included in §25.5, Definitions. In addition, §25.471 has been amended to clarify that certain provisions of the customer protection rules cannot be waived by commercial customers with a peak demand of 50 kilowatts (kW) or higher. Specifically, such commercial customers could not agree to terms of service that do not comply with §25.481, Unauthorized Charges, §25.495, Unauthorized Change of Retail Electric Provider, and §25.485(b) and (d)-(e), Customer Access and Complaint Handling.

The commission proposes amendments to §25.472, Privacy of Customer Information, that would allow a REP to release proprietary customer information to a vendor, partner, or affiliate for the purposes of marketing other products or services only if the vendor, partner, or affiliate has signed a confidentiality agreement. In addition, the REP must mail a notice to all customers who may be included in the release of information and provide the customers at least 30 days to opt out of being included in the information release. This will allow REPs to offer new products and other competitive energy services directly to customers, while still allowing customers who do not want such solicitations the option of not releasing their information to third parties.

Proposed amendments to §25.473, Non-English Language Requirements, clarify that the Electricity Facts Label must be provided in English or Spanish, at the customer's designation. In addition, if the REP markets its products in another language, the Electricity Facts Label must be provided to the customer in that language.

Currently §25.474, Selection or Change of Retail Electric Provider, includes provisions relating to authorization and verification of enrollment, the switching process, acquisition of customers, and unauthorized change of REP (slamming). The commission proposes repealing §25.474 and adopting a new §25.474, Selection of Retail Electric Provider, new §25.493, Acquisition and Transfer of Customers from one Retail Electric Provider to Another, and new §25.495, Unauthorized Change of Retail Electric Provider.

Proposed new §25.474, Selection of Retail Electric Provider, strengthens and clarifies the customer authorization process to enroll with a REP. For each method of enrollment, by internet, telephone sales, door-to-door sales, written (letter of authorization (LOA)), or other personal solicitations, a REP will be required to disclose standard information and obtain standard information from the applicant before obtaining that applicant's explicit authorization to enroll. For enrollment via door-to-door sales, a REP must wear an identification badge with the individual's name and photograph, the name of the REP and its certification number and toll-free telephone number. In addition to obtaining the applicant's signature on an LOA, the REP will be required to obtain telephonic verification of the applicant's decision to enroll with the REP. A REP would not be allowed to submit a switch request until it has obtained and recorded the telephonic verification. Requiring telephonic verification will enhance a REP's ability to efficiently enroll customers and reduce the number of customer cancellations and slamming complaints from door-to-door marketing.

The proposed amendments to the requirements for telephonic enrollments will provide needed clarification regarding recording an applicant's authorization. Current rules are confusing for customers and REPs and have gaps that complicate enforcement by the commission. The proposed amendments require a REP to record the entirety of the applicant's authorization to enroll. In that recording, the REP must disclose specific information regarding the company and the product offered, and obtain specific information about the applicant. Also, the rule requires the REP to ask specific questions regarding the applicant's decision to switch; and the REP must receive affirmative answers from the applicant. These proposed changes provide certainty to REPs seeking to enroll new customers, while still allowing them to choose whether to record the authorizations or use a third party verification to record the entire authorization process.

Proposed new §25.474 also clarifies that authorization and right of rescission are not applicable for the following scenarios: transferring a customer's service to the affiliated REP for non-payment, transferring a customer's service to POLR, transferring a

customer's service to a competitive affiliate of the POLR, transferring a customer's service due to acquisition of a customer's REP by another REP, or transferring a customer's service from one premise to another without changing REPs. These changes reflect current practices and are intended only as clarification.

The commission proposes amendments to §25.475, Information Disclosures to Residential and Small Commercial Customers, that will clarify disclosure requirements for advertising and makes clarifying changes to the terms of service, Electricity Facts Label, and Your Rights as a Customer documents. REPs will be required to include the Electricity Facts Label or a statement on how to obtain standardized information only if the REP makes a specific claim in its marketing and advertising materials regarding price or environmental quality for an electricity product with respect to a product offered by another REP.

Proposed amendments to §25.476, Labeling of Electricity with Respect to Fuel Mix and Environmental Impact, will simplify the data collection and calculation process to develop the fuel mix and environmental impact disclosures on the Electricity Facts Label. The commission proposes to require generators to annually report fuel mix and emissions data for each of their generating units in Texas to the registration agent. Also, the commission proposes that the registration agent compile the data and post the scorecards REPs use to calculate the fuel mix and environmental impact disclosures. Currently commission staff must use three-year-old information from the Environmental Protection Agency and compile the data. Requiring generators to provide the data directly to the registration agent will streamline the process and enhance efficiency. In addition, the registration agent has demonstrated its ability to receive and process complicated data and quickly make relevant calculations.

The commission proposes amendments to §25.477, Refusal of Electric Service, to clarify the disclosure requirements when a REP refuses service to an applicant or customer. If a REP refuses service on the basis of credit, the REP must provide notice consistent with the Fair Credit Reporting Act. A REP that refuses service for any other reason must verbally notify the applicant or customer of the specific reasons for the refusal and, upon request by the applicant or customer, the REP must provide written notice.

Proposed amendments to §25.478, Credit Requirements and Deposits, allow REPs to better manage their bad debt exposure, while ensuring that customers who demonstrate good payment history can establish creditworthiness. The commission proposes increasing the maximum deposit amount a REP may request from a residential customer. Instead of the higher of either one-sixth annual billing or the sum of the estimated billings for the next two months, the commission proposes allow a maximum deposit of one-fifth annual billings. This is roughly equivalent to 80 days of usage that a REP is likely to pay before service to a non-paying customer can be terminated. The commission also proposes requiring all REPs to refund a deposit if a residential customer has made timely payments for 12 months (or 24 months for a small commercial customer). Requiring all REPs to return deposits once good payment history is established will provide customers an incentive to pay promptly.

The commission proposes amendments to §25.479, Issuance and Format of Bills, to provide needed clarification of billing for electric service. Issuing accurate and timely bills to customers is imperative to the development of a competitive retail electric market. Incorrect or late billings cause payment problems for customers and REPs. To provide additional certainty to the retail market, the commission proposes requiring REPs to issue bills within 30 days of receiving usage data and invoices for non-bypassable charges.

Proposed amendments to §25.480, Bill Payment and Adjustments, provide clear and specific guidelines to allow a REP to backbill a customer as a result of underbilling. Also, the current rule addresses transmission and distribution utilities' (TDU) responsibility to submit wires charges in an appropriate timeframe. As a result, REPs may not have an adequate amount of time to submit a corrected bill within the six-month time limitation. Therefore, the commission proposes that neither a REP nor a customer would be responsible for corrected charges billed by the TDU unless such charges are billed within three months of the billing cycle in which the underbilling occurred. Likewise, a customer would not be responsible for corrected charges billed by a REP unless such charges are billed within six months of the billing cycle in which the underbilling occurred. These changes maintain a six-month backbilling limitation for customers, but ensure that a REP has time to issue a corrected bill due to corrections made by the TDU.

The commission proposes clarifying changes to §25.481, Unauthorized Charges.

Proposed amendments to §25.482, Termination of Contract, will clarify obligations of a REP regarding energy assistance clients; that customers must pay by the final due date, as stated in the termination notice, not the termination date; and that customers terminated for reasons other than non-payment will be transferred to the POLR, consistent with §25.43, Provider of Last Resort (POLR).

The commission proposes amendments to §25.483, Disconnection of Service, to allow all REPs the right to disconnect for non-payment beginning June 1, 2004, specify deadlines for reconnection of customers' service, and clarify obligations of a REP regarding energy assistance clients (consistent with the changes to §25.482). REPs are currently experiencing a high level of bad debt.

The current process of dropping non-paying customers to the affiliated REP has resulted in customer confusion because customers do not understand why they are receiving bills from the affiliated REP after a drop for non-payment of bills to their chosen REP. In addition, the current process has resulted in an increased workload for TDUs because the one-step disconnection process has been replaced by a two-step process that includes a drop to the affiliated REP prior to disconnection.

A majority of customers are already subject to disconnection for non-payment. All REPs may disconnect service to large commercial customers for non-payment. Affiliated REPs and the POLR may disconnect service to all customers for non-payment. The commission proposes making the remaining small commercial and residential customers served by competitive REPs subject to disconnection as well.

Proposed amendments to §25.483 specify reconnection timelines to ensure that customers are quickly reconnected after making a satisfactory payment.

The commission proposes clarifying changes to §25.485, Customer Access and Complaint Handling to provide greater clarity and structure to the commission's complaint handling process.

Proposed amendments to §25.491, Record Retention and Reporting Requirements, will streamline the annual reports on complaints received by the REP. This will help REPs compile the information and help the commission evaluate the annual reports.

The commission proposes new §25.493, Acquisition and Transfer of Customers from one Retail Electric Provider to Another. This section was previously included in §25.474, Selection or Change of Retail Electric Provider. The proposed new rule makes clarifying changes only.

The substance of proposed new §25.495, Unauthorized Change of Retail Electric Provider, also was previously included in §25.474. The new rule provides needed clarification for resolving unauthorized change of REP and requires the REP, registration agent, and TDU to follow specific procedures to facilitate the prompt return of the customer to the REP of choice. The rules do not specify how this should be accomplished, but require that the customer pay no more than the price the customer would have been billed had the unauthorized change not occurred, that the REP that served the customer without proper authorization pay all costs associated with returning the customer, that the customer be refunded any money paid to the unauthorized REP, and that the TDU may bill the REP of record for all non-bypassable charges for the period of the unauthorized change.

Finally, the commission proposes new §25.497, Critical Care Customers. The provisions of the proposed new rule are already being used in the market. The commission informally adopted these procedures at the December 7, 2001 Open Meeting (*See* Project Number 23400, *PUC Rulemaking Proceeding to Implement Electric Restructuring Transition Implementation Issues)*.

Staff solicited comments from interested parties and held six workshops over the last four months to discuss how the customer protection rules could be improved. In August 2003, staff requested specific comments on the strawman drafts of the rules.

Carrie Collier, Analyst, Retail Market Oversight, Electric Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Collier has also determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be a well-ordered and more efficient market place that protects customers while promoting competition in the provision of retail electric power service to customers. Furthermore, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There may be economic costs to persons who are required to comply with the proposed section, such as additional printing costs. These costs are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed sections will outweigh these costs.

Ms. Collier has determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and, therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022.

The commission staff will conduct a public hearing on this rulemaking pursuant to the Administrative Procedure Act §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, December 10, 2003, 9:00 a.m. - 4:00 p.m.

The commission seeks comments on the proposed sections and proposed form from interested persons. Comments on the proposal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. The deadline for submission of comments is December 1, 2003. Reply comments are due by December 15, 2003. 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. The proposed form may be obtained from the commission's Central Records under Project Number 27084 or through the commission's website at www.puc.state.tx.us. All comments should be filed in Project Number 27084.

In addition, the commission seeks comments on the following questions:

1. Should the commission give all REPs the right to disconnect on June 1, 2004, instead of October 1, 2004 as proposed in the amendments to §25.483, Disconnection of Service. Once all REPs have the right to disconnect for non-payment, should §25.482, Termination of Service be repealed?

2. Should the commission allow all REPs to request "hard" disconnects of non-paying customers. Under a hard disconnect policy, a customer that has been disconnected for non- payment could not receive service from another provider unless the customer provides evidence that its debt to the disconnecting REP has been paid in full. If the commission were to adopt such a policy, would there need to be other changes to the customer protection rules (such as requiring all REPs to offer a deferred payment plan prior to disconnecting service).

3. The commission is proposing that REPs enrolling customers through door-to-door marketing using both a letter of authorization (LOA) and telephonic verification of the applicant's decision to enroll. Instead, should door-to-door enrollments be authorized by telephonic authorization consistent with proposed §25.474(h)(6)-(7)?

4. The Electricity Facts Label discloses the environmental impact of a REP's electricity product as an indexed comparison to the state average. Is there a more appropriate way to provide such information in an easy-to-read format? In the alternative, should REPs be allowed to show a generic environmental impact if the product does not make a claim regarding environmental impact?

5. Should the commission amend §25.485, relating to Customer Access and Complaint Handling, to address situations where it is unclear as to what market participant may be at fault (such as disputes as to the accuracy of a meter read, etc.)?

6. What, if any, rules governing TDUs roles and responsibilities, should be addressed in the standard tariff for retail delivery service and which should be addressed in the commission's substantive customer protection rules?

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §25.5

The commission proposes these sections pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002

(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. The commission also proposes this rule pursuant to PURA §39.101, which grants the commission authority to establish various, specific protections for retail customers; §39.102, which provides retail customer choice; and PURA chapter 17, subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.102, and PURA chapter 17, subchapters A, C and D.

*§25.5. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (36) (No change.)

(37) Electricity Facts Label[~~label~~] -- Information in a[~~A~~] standardized format, as described in §25.475(e) of this title (relating to Information Disclosures to Residential and Small Commercial Customers), [~~for disclosure of information and contract terms~~ ] made available to customers that summarizes the price, contract terms, fuel sources, and environmental impact associated with[~~to help them choose a provider and~~ ] an electricity product to help a customer choose an electricity product.

(38) Electricity product -- A specific type of retail electricity service developed and identified by a REP, the[~~product offered by a competitive retailer to a customer for the provision of retail electric service under~~] specific terms and conditions of which are summarized in an[~~, and marketed under a specific~~] Electricity Facts Label that is specific to that electricity product[~~label~~].

(39) - (144) (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 October 20, 2003.

TRD-200306925
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 936-7223

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## SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

### 16 TAC §§25.471 - 25.483, 25.485, 25.491, 25.493, 25.495, 25.497

The commission proposes these sections pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (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. The commission also proposes this rule pursuant to PURA §39.101, which grants the commission authority to establish various, specific protections for retail customers; §39.102, which provides retail customer choice; and PURA chapter 17, subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.102, and PURA chapter 17, subchapters A, C and D.

*§25.471. General Provisions of Customer Protection Rules.*

(a) Application. This subchapter applies to aggregators and retail electric providers (REPs). In addition, where specifically stated, these rules shall apply to transmission and distribution utilities (TDUs). These rules specify when certain provisions are applicable only to some, but not all, of these providers.

(1) Affiliated [~~Affiliate~~] REP customer protection rules, to the extent the rules differ from those applicable to all REPs or those that apply to the provider of last resort (POLR), do [~~shall~~] not apply to the affiliated [~~affiliate~~] REP when serving customers outside the geographic area served by its affiliated transmission and distribution utility. The affiliated [~~affiliate~~] REP customer protection rules [~~shall~~] apply until the price to beat obligation ends [~~January 1, 2007~~].

(2) Requirements applicable to a POLR apply to a REP only in its provision of service as a POLR.

[~~(3) The rules in this subchapter shall take effect on January 15, 2001~~].

(3) [~~(4)~~] The rules in this subchapter are minimum, mandatory requirements that shall be offered to or complied with for all customers unless otherwise specified. Except for the provisions of §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges), and §25.485(b) and (d) - (e) of this title (relating to Customer Access and Complaint Handling), a [~~A~~] customer other than a residential or small commercial class customer, or a non-residential customer whose load is part of an aggregation in excess of 50 kilowatts, may agree to terms of service that reflect either a higher or lower level of customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules shall be reduced to writing and provided to the customer. Additionally, copies of such agreements shall be provided to the commission upon request.

(4) [~~(5)~~] The rules of this subchapter control over any inconsistent provisions, terms, or conditions of a REP's terms of service [~~contract~~] or other documents describing service offerings for [~~residential and small commercial customers or~~] customers in Texas.

(5) For purposes of this subchapter, a municipally owned utility or electric cooperative is subject to the same provisions as a REP where the municipally owned utility or electric cooperative sells retail electric power and energy outside its certificated service area.

(6) Revisions to this subchapter shall take effect on June 1, 2004.

(b) Purpose. The purposes [~~purpose~~] of this subchapter are [~~is~~] to:

(1) provide minimum standards for customer protection. An aggregator or REP may adopt higher standards for customer protection, provided that the prohibition on discrimination set forth in subsection (c) of this section is not violated;

(2) provide customer protections and disclosures established by other state and federal laws and rules including but not limited to the Fair Credit Reporting Act (15 U.S.C. §1681, *et seq.*) and the Truth in Lending Act (15 U.S.C. §1601, *et seq.*) Such protections are applicable where appropriate, whether or not it is explicitly stated in these rules;

(3) provide customers with sufficient information to make informed decisions about electric service in a competitive market; and

(4) prohibit fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators and REPs in the marketing, solicitation and sale of electric service and in the administration of any terms of service for electric service.

(c) Prohibition against discrimination. This subchapter prohibits REPs from unduly refusing to provide electric service or otherwise unduly discriminating in the marketing and provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

(d) Definitions. For the purposes of this subchapter the following words and terms have the following meaning, unless the context clearly indicates otherwise:

(1) Applicant--A person who applies for electric service via a move-in or switch with a REP that is not currently the person's REP of record or aggregator.

[(1) Affiliate retail electric provider--A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area and who provides retail electric service to customers inside the geographic area served by its affiliated transmission and distribution utility.]

(2) Competitive energy services--As defined in §25.341 of this title (relating to Definitions).

[(3) Competitive retailer--A REP, municipally owned utility, or electric cooperative that offers customer choice in the restructured competitive electric power market or any other entity authorized to provide electric power and energy in Texas. For purposes of this rule, a municipally owned utility or electric cooperative is only considered a competitive retailer where it sells retail electric power and energy outside its certificated service territory. Similarly, an affiliate REP is only considered a competitive retailer where it sells retail electric power and energy outside the geographic area served by its affiliated transmission and distribution utility. In no event does this term apply to a REP providing service as the provider of last resort.]

(3) [(4)] Customer--A person who is currently receiving retail electric service from a REP in the person's own name or the name of the person's spouse, or the name of an authorized representative of a partnership, corporation, or other legal entity, including[; or] a person who is changing premises but is not changing the REP of record [applies for such service for the first time or reapplies after discontinuance or termination of service].

[(5) Disconnection of service--Interruption of a customer's supply of electric service at the customer's point of delivery by a transmission and distribution utility, a municipally owned utility or an electric cooperative.]

[(6) Economically distressed geographic area--Zip code area in which the average household income is less than or equal to 60% of the statewide median income, as reported in the most recently available United States Census data.]

(4) [(7)] Electric service--Combination of the transmission and distribution service provided by a transmission and distribution utility, municipally owned utility, or electric cooperative, metering service provided by a TDU or a competitive metering provider, and the generation service provided to an end-use customer by a REP. This term does not include optional competitive energy services, as defined in §25.341 of this title (relating to Definitions), that are not required for the customer to obtain service from a REP.

(5) [(8)] Energy service--As defined in §25.223 of this title (relating to Unbundling of Energy Service).

(6) [(9)] In writing--Written words memorialized on paper or sent electronically.

(7) Move-in--A request for service to a premise where the customer of record changes.

[(10) Provider of last resort (POLR)--As defined in §25.43 of this title (relating to Provider of Last Resort).]

[(11) Registration agent--Entity designated by the commission to administer premise information and related processes concerning a customer's choice of a REP in the competitive electric market in Texas.]

(8) [(12)] Retail electric provider (REP)--Any entity as defined in §25.5 of this title (relating to Definitions). For purposes of this rule, a municipally owned utility or an electric cooperative is only considered a REP where it sells retail electric power and energy outside its certified service territory. An agent of the REP may perform all or part of the REP's responsibilities pursuant to this subchapter. For purposes of this subchapter, the REP shall be responsible for the actions of the agent.

(9) [(13)] Small commercial customer--A non-residential [nonresidential] customer that has a peak demand of less than 50 kilowatts during any 12-month period.

[(14) Standard meter--As defined in §25.341 of this title.]

(10) Switch--The process by which a person changes REPs without changing premises.

(11) [(15)] Termination of service--The cancellation or expiration of a service [sales] agreement or contract by a REP or customer [by notification to the customer and the registration agent].

*§25.472. Privacy of Customer Information.*

(a) Mass customer lists. Prior to the commencement of retail competition, an electric utility shall release a mass customer list to certificated retail electric providers (REPs) and registered aggregators.

(1) [Contents of mass customer list.] A mass customer list shall consist of the name, billing address, rate classification, monthly kilowatt-hour usage for the most recent 12-month period, meter type, and account number or electric service identifier (ESI-ID) [(ESI)]. All customers eligible for the price to beat pursuant to the Public Utility Regulatory Act §39.202 shall be included on the mass customer list, except a customer who opts not to be included on the list pursuant to paragraph (2) of this subsection.

(2) Prior to the release of a mass customer list, an electric utility shall mail a notice [issue a mailing] to all customers who may be included on the list. The notice [mailing] shall:

(A) explain the issuance of the mass customer list;

(B) provide the customer with the option of not being included on the list and allow the customer at least 30 [15] days to exercise that option;

(C) inform the customer of the availability of the no call lists pursuant to §25.484 of this title (relating to Texas Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List), and [~~shall~~ ] provide the customer with information on how to request placement on the list;

(D) provide a toll free telephone number and an Internet website address to notify the electric utility of the customer's desire to be excluded from the mass customer list.

(3) [~~Release date.~~ ] The commission will require the electric utility to release a mass customer list no later than 120 days before the commencement of customer choice.

(4) The mass customer list shall be issued, at no charge, to all REPs certified by, and aggregators registered with, the commission that will be providing retail electric or aggregation services to residential or small commercial customers.

(5) A REP shall not use the list for any purpose other than marketing electric service and verifying a customer's authorized selection of a REP prior to submission of the customer's enrollment to the registration agent.

(b) Individual customer and premise information.

(1) Except as specified in subsection (a) of this section, a REP or aggregator shall not release proprietary customer information, as defined in §25.272(c)(5) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), to any other person, including an affiliate of the REP, without obtaining the customer's or applicant's verifiable authorization by means of one of the methods authorized in §25.474 of this title (relating to Selection [~~or Change~~] of Retail Electric Provider). This section shall not be interpreted to prevent a REP's communication of proprietary customer information to the registration agent in order to effectuate a customer's move-in, transfer, or switch. A REP may release proprietary customer information, as defined in §25.272(c)(5) of this title, to the registration agent, REP or transmission and distribution utility (TDU) as necessary to complete a required market transaction, under terms approved by the commission. This prohibition shall not apply to the release of such information by a REP or aggregator to:

(A) the commission in pursuit of its regulatory oversight or the investigation and resolution of customer complaints involving REPs or aggregators;

(B) an agent, vendor, partner, or affiliate of the REP or aggregator engaged [~~to collect an overdue or unpaid amount or~~] to perform any services for or functions on behalf of [~~of the duties of~~] the REP or aggregator, including marketing of the REP's or aggregator's own products or services, or products or services offered pursuant to joint agreements between the REP or aggregator and a third party [~~if such duties are outsourced~~];

*(i)* All such agents, vendors, partners, or affiliates of the REP or aggregator shall be required to sign a confidentiality agreement with the REP or aggregator and agree to be held to the same confidentiality standards as the REP or aggregator pursuant to this section; and

*(ii)* Prior to the release of information to such agent, vendor, partner or affiliate, a REP or aggregator shall mail a notice to all customers who may be included in the information provided to such agent, vendor, partner, or affiliate. The notice shall:

*(I)* explain the issuance of the information release and the reason for the information release; and

*(II)* provide the customer with the option of not being included in the information release and allow the customer at least 30 days to exercise that option.

*(iii)* This notice shall not be required if the REP provided customers the opportunity to opt out of being included in the release of customer information when the customer was enrolled.

(C) a consumer reporting agency as defined by the Federal Trade Commission [~~credit reporting agencies pursuant to state and federal law~~];

(D) an energy assistance agency to allow a customer or an applicant to qualify for and obtain other financial assistance provided by the agency. A REP may rely on the representations of an entity claiming to provide energy assistance;

(E) local, state, and federal law enforcement agencies; [~~pursuant to lawful process; or~~]

(F) the transmission and distribution utility within whose geographic service territory the customer or applicant is located, pursuant to the provisions of the transmission and distribution utility's commission-approved Tariff for Retail Delivery Service; or[~~,~~]

(G) the Office of the Public Utility Counsel, upon request pursuant to Public Utility Regulatory Act (PURA) §39.101(d).

(2) A REP or aggregator shall not publicly disclose or make available for sale any customer-specific information about its customers including that obtained from the registration agent, the customer's transmission and distribution utility, or the customer. A REP or aggregator shall not disseminate, sell, deliver, or authorize the dissemination, sale, or delivery of any customer-specific information or data obtained.

(3) A REP shall, upon the request of the customer or another REP that has received authorization from the customer, request from the TDU [~~submit to the requesting REP or to the customer directly,~~] the monthly usage of the customer for the previous 12 months. The TDU shall provide the requested information no later than three business days after the request is submitted. The REP shall provide the usage information to the requesting REP or to the customer directly[~~, or for as long as the REP has provided service to the customer, whichever is shorter~~]. The methods of authorization of release of customer specific information shall be those methods described in §25.474 of this title. The TDU or REP shall not release any information of a prior occupant of the premise.[ ~~A customer shall be entitled to request this information free of charge at least once every 12 months.~~]

(4) A REP shall, upon the request of an energy assistance agency, provide a 12-month billing history free of charge that includes both usage data and the dollar amount of each monthly billing. If 12 months of billing data are not available from the REP, the REP shall estimate the amount billed using the REP's residential rate. The history shall also clearly designate estimated amounts. A residential billing history requested by an energy assistance agency shall be provided by the end of the next business day after the request is made. A residential billing history requested by a customer shall be provided within five business days of the customer request.

(5) [~~(4)~~] Upon the request of a customer, a REP shall notify a third person chosen by the customer of any pending disconnection [~~of service~~] or termination of [~~contract for~~] electric service with respect to the customer's account.

[~~(5) This section shall not be interpreted to prevent a REP's communication of proprietary customer information to the registration agent in order to effectuate a customer selection or change of a REP or the customer's switch to the provider of last resort.~~ ]

[(6) A REP may release proprietary customer information, as defined in §25.272(c)(5) of this title, to the registration agent, under terms approved by the commission.]

*§25.473. Non-English Language Requirements.*

(a) Applicability. This section applies to retail electric providers (REPs), aggregators, and the registration agent.

(b) [(a)] Retail electric providers (REPs). A REP shall provide the following information to a customer in English or Spanish, at the customer's designation when the customer is initially enrolled. Additionally, if the REP markets its products or services in a language other than English or Spanish, the following information shall also be provided to the customer in that other language:

(1) [all documents required by this subchapter including, but not limited to, customer rights, including ] Your Rights as a Customer disclosure, terms of service documents, Electricity Facts Label, customer bills, and customer bill notices [and termination or disconnection notices];

(2) information on the availability of new electric services, discount programs, and promotions; and

(3) access to customer service, including the restoration of electric service and response to billing inquiries.

(c) [(b)] Aggregators. An aggregator shall provide the following information to a customer in English or Spanish, at the customer's designation when the customer is initially solicited or enrolled. Additionally, if the aggregator markets its products or services in a language other than English or Spanish, the following information shall also be provided to the customer in that other language:

(1) terms of service documents required by this subchapter;

(2) the availability of electric discount programs; and

(3) access to customer service.

(d) [(c)] Dual language requirement. The following documents shall be provided to all customers in both English and Spanish:

(1) Your Rights as a Customer disclosure;

(2) the enrollment notification notice provided by the registration agent pursuant to §25.474(l) [(j)] of this title (relating to Selection [or Change] of Retail Electric Provider); and

(3) a disconnection or termination notice [issued by the provider of last resort].

(e) [(d)] Prohibition on mixed language. Unless otherwise noted in this subchapter, if any portion of a printed advertisement, electronic advertising over the Internet, direct marketing material, billing statement, terms of service document, or Your Rights as a Customer disclosure is translated into another language, then all portions shall be translated into that language. A single informational statement advising how to obtain the same printed advertisements, electronic advertising over the Internet, direct marketing material, billing statement, terms of service documents, or Your Rights as a Customer disclosure in a different language is permitted.

*§25.474. Selection of Retail Electric Provider.*

(a) Applicability. This section applies to retail electric providers (REPs) and aggregators seeking to enroll customers for retail electric service. In addition, where specifically stated, this section applies to transmission and distribution utilities (TDUs) and the registration agent.

(b) Purpose. The provisions of this section establish procedures for enrollment of applicants or customers by a REP and ensure that all customers in this state are protected from an unauthorized switch from the customer's REP of choice or an unauthorized move-in. A contested switch in providers shall be presumed to be unauthorized unless the REP provides proof, in accordance with the requirements of this section, of the customer's authorization and verification.

(c) Initial REP selection process.

(1) In conjunction with the commission's customer education campaign, the commission may issue to customers for whom customer choice will be available an explanation of the REP selection process. The customer education information issued by the commission may include, but is not limited to:

(A) an explanation of retail electric competition;

(B) a list of all REPs certified to provide electric service to the customer;

(C) a form that allows the customer to contact or select one or more of the listed REPs from which the customer desires to receive information or to be contacted; and

(D) information on how a customer may designate whether the customer would like to be placed on the statewide Do Not Call List and indicate the fee for such placement.

(2) Any affiliated REP assigned to serve a customer that is entitled to receive the price to beat rate, pursuant to the Public Utility Regulatory Act (PURA) §39.202(a), shall issue to a customer, either as a bill insert or through a separate mailing, no later than 30 days after the commencement of customer choice:

(A) A terms of service document that includes an explanation of the price to beat rate;

(B) Your Rights as a Customer disclosure; and

(C) An Electricity Facts Label for the price to beat, which may, at the discretion of the REP, be in a separate document or contained in the terms of service document.

(3) An electric utility, whose successor affiliated REP will continue to serve customers not eligible for the price to beat rate, pursuant to PURA §39.102(b), shall issue to these customers a terms of service document on a date prescribed by the commission. Such a document shall contain an explanation of the price the customer will be charged by the affiliated REP.

(d) Enrollment via the internet. For enrollments of customers via the internet, a REP or aggregator shall obtain authorization and verification of the switch request from the customer in accordance with this subsection.

(1) The website (or websites) shall clearly and conspicuously identify the legal name of the aggregator and its registration number to provide aggregation services or REP and its certification number sell retail electric service, its address, telephone number;

(2) The website shall include a means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the customer and the REP or aggregator that is an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information;

(3) The website shall include an explanation that new service or a switch can only be made by the electric service customer or the customer's authorized agent;

(4) The entire enrollment process shall be in plain, easily understood language. The entire enrollment shall be the same language. Nothing in this section is meant to prohibit REPs or aggregators from utilizing multiple enrollment procedures or websites to conduct enrollments in multiple languages.

(5) Required authorization disclosures. Prior to requesting confirmation of the switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:

(A) the name of the new REP;

(B) the name of the specific electric service package or plan for which the applicant's assent is attained;

(C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP or aggregator shall provide a means of obtaining and recording a customer's language preference;

(D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;

(E) term or length of the term of service;

(F) the presence or absence of early termination fees or penalties, and applicable amounts;

(G) any requirement to pay a deposit and the estimated amount of that deposit;

(H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;

(I) the applicant's right, pursuant to subsection (j) of this section, to review and cancel the contract within three federal business days, after receiving the terms of service, without penalty; and

(J) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable, before the applicant's electric service is switched to the REP.

(6) The enrolling customer shall be required to check a box affirming that the customer has read and understands the disclosures and terms of service required by paragraph (5) of this subsection.

(7) The REP or aggregator shall provide access to the complete terms of service document that is being agreed to by the customer on the website such that the customer may review the terms of service prior to enrollment. A prompt shall also be provided for the customer to print or save the terms of service document to which the customer assents.

(8) The REP or aggregator shall also provide a toll-free telephone number, Internet website address, and e-mail address for contacting the REP or aggregator throughout the duration of the customer's agreement. The REP or aggregator shall also provide the appropriate toll-free telephone number that the customer can use to report service outages.

(9) Customer authorizations shall adhere to any state and federal guidelines governing the use of electronic signatures.

(10) Authorization for Internet enrollment. Prior to final confirmation by the customer of enrollment with the REP or aggregator, the REP or aggregator shall:

(A) obtain the customer's email address, billing name, billing address, service address, and name of any authorized representative;

(B) obtain the customer's electronic service identifier (ESI-ID), if available;

(C) affirmatively inquire whether customer has decided to establish new service or change from the current REP to the new REP;

(D) affirmatively inquire whether the customer designates the new REP to perform the necessary tasks to complete a switch or move in for the customer's service with the new REP; and

(E) obtain one of the following account holder verification data: last four digits of the social security number, mother's maiden name, city or town of birth, or month and day of birth.

(11) After enrollment, the REP or aggregator shall send a confirmation, by email, of the customer's request to select the REP. The confirmation email shall include:

(A) a clear and conspicuous notice of the customer's right to review and cancel the contract within three federal business days, after receiving the terms of service without penalty and offer the customer the option of exercising this right by toll-free number, email, Internet website, facsimile transmission or regular mail. This notice shall be accessible to the customer without need to open an attachment or link to any other document; and

(B) the terms of service and Your Rights as a Customer documents. These may be documents attached to the confirmation email, or the REP or aggregator may include a link to an Internet webpage containing the documents.

(e) Written enrollment. For enrollments of customers via a written letter of authorization (LOA), a REP or aggregator shall obtain authorization and verification of the switch or move-in request from the customer in accordance with this subsection.

(1) All LOAs for move-in or switch orders shall be in plain, easily understood language. The entire enrollment shall be in the same language.

(2) The LOA shall be a separate or easily separable document containing the requirements prescribed by this subsection for the sole purpose of authorizing the REP to initiate a switch request. The LOA is not valid unless it is signed and dated by the customer requesting the move-in or switch.

(3) The LOA may contain a description of inducements associated with enrolling with the REP; however, any such inducement shall not be printed on the LOA;

(4) The LOA shall be legible and shall contain clear and unambiguous language;

(5) Required authorization disclosures. The LOA shall disclose the following information:

(A) the name of the new REP;

(B) the name of the specific electric service package or plan for which the applicant's assent is attained;

(C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP shall provide a means of obtaining and recording a customer's language preference;

(D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;

(E) term or length of the term of service;

(F) the presence or absence of early termination fees or penalties, and applicable amounts;

(G) any requirement to pay a deposit and the estimated amount of that deposit;

(H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;

(I) the applicant's right, pursuant to subsection (j) of this section, to review and cancel the contract within three federal business days, after receiving the terms of service, without penalty; and

(J) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable, before the applicant's electric service is switched to the REP.

(6) Authorization of written enrollment. A REP or aggregator shall, as part of the LOA:

(A) obtain the customer's billing name, billing address, and service address;

(B) obtain the customer's ESI-ID, if available;

(C) affirmatively inquire whether the customer has decided to establish new service or change from their current REP to the new REP;

(D) affirmatively inquire whether the customer designates the new REP to perform the necessary tasks to complete a switch or move in for the customer's service with the new REP; and

(E) obtain one of the following account holder verification data: last four digits of the social security number, mother's maiden name, city or town of birth, or month and day of birth.

(7) The following LOA form meets the requirements of this subsection. Other versions may be used, but shall contain all the information and disclosures required by this subsection.
Figure: 16 TAC §25.474(e)(7)

(8) Before obtaining a signature from a customer, a REP shall:

(A) provide to the customer the Electricity Facts Label and provide the customer a reasonable opportunity to read the terms of service and any written materials accompanying the terms of service document; and

(B) answer any questions posed by any customer about information contained in the documents.

(9) Upon obtaining the customer's signature, a REP or aggregator shall immediately provide the customer a legible copy of the signed LOA, and shall distribute or mail the terms of service document and Your Rights as a Customer disclosure. If a written solicitation by a REP contains the terms of service document, any tear-off portion that is submitted by the customer to the REP to obtain electric service shall allow the customer to retain the terms of service document.

(10) The customer's signature on the LOA shall constitute an authorization of the switch request if the LOA complies with the provisions of this section and the terms of service or contract comply with the requirements of §25.475(d) of this title (relating to Information Disclosures to Residential and Small Commercial Customers).

(f) Enrollment via door-to-door sales. A REP or aggregator that engages in door-to-door marketing at a customer's residence shall comply with all requirements for written enrollments and LOA requirements detailed in subsection (e) of this section. In addition, a REP or aggregator shall comply with the following additional requirements:

(1) Solicitation requirements. A REP or aggregator that engages in door-to-door marketing at a customer's residence shall comply with the following requirements:

(A) The REP or aggregator shall provide the disclosures required by this section and the three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door-to-Door Sales (16 C.F.R. §429).

(B) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. In addition, the individual shall wear an identification badge that includes the individual's name and photograph, the REP or aggregator's certification or registration number, and a toll-free telephone number maintained by the REP or aggregator that the applicant may call to verify the door-to-door representative's identity during specified business hours. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession.

(C) The REP or aggregator shall affirmatively state that it is not a representative of the customer's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable person that the individual represents the customer's transmission and distribution utility or any other REP or aggregator.

(D) The REP or aggregator shall not represent that a customer is required to switch service in order to continue to receive power.

(E) Door-to-door representatives shall adhere to all local city/subdivision guidelines concerning door-to-door solicitation.

(F) The REP or aggregator shall inform customers that they will receive a telephone call within 48 hours to obtain authorization and verification of the customer's enrollment. If telephone service is not available at the premise, the REP or aggregator shall give the customer a toll-free telephone number to call in order to authorize and verify the enrollment.

(2) Verification of authorization for door-to-door enrollment. A REP, or an independent third party retained by the REP, shall call the enrolling customer within 48 hours of the enrollment to verify the applicant's decision to enroll with the REP.

(A) The verification call shall comply with the requirements in subsection (h)(7) of this section.

(B) If the customer is not available at the time of the verification call, the REP or independent third party shall leave a toll-free number for the customer to call and shall indicate to the customer that the switch cannot be processed until the enrollment is verified.

(C) The REP shall not submit a switch request until it has obtained a recorded telephonic verification of the enrollment.

(g) Personal solicitations other than door-to-door marketing. A REP or aggregator that engages in personal solicitation at a public location (such as malls, fairs, or places of business) shall comply with all requirements for written enrollments and LOA requirements detailed in subsection (e) of this section. In addition, a REP or aggregator shall comply with the following additional requirements:

(1) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession.

(2) The individual who represents the REP or aggregator shall not state or imply that it is a representative of the customer's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable person that the individual represents the customer's transmission and distribution utility or any other REP or aggregator.

(3) The REP or aggregator shall not represent that a customer is required to switch service in order to continue to receive power.

(h) Telephonic enrollment. For enrollments of customers via telephone solicitation, a REP or aggregator shall obtain authorization of the switch request from the customer in accordance with this subsection.

(1) A REP or aggregator shall electronically record on audio tape, a wave sound file, or other recording device the entirety of a customer's authorization.

(2) The REP or aggregator shall inform the customer that the authorization portion of the call is being recorded.

(3) Such authorizations shall be conducted in the same language as that used in the sales transaction.

(4) Automated systems shall provide customers the option of speaking with a live person at any time during the call.

(5) A REP or aggregator, or its sales representative, initiating a three-way call or a call through an automated verification system shall drop off the call once a three-way connection has been established.

(6) Required authorization disclosures. Prior to requesting confirmation of the switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:

(A) the name of the new REP;

(B) the name of the specific electric service package or plan for which the applicant's assent is attained;

(C) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;

(D) term or length of the term of service;

(E) the presence or absence of early termination fees or penalties, and applicable amounts;

(F) any requirement to pay a deposit and the estimated amount of that deposit;

(G) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;

(H) the applicant's right, pursuant to subsection (j) of this section, to review and cancel the contract within three federal business days, after receiving the terms of service, without penalty; and

(I) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable, before the applicant's electric service is switched to the REP.

(7) Authorization of telephonic enrollment.

(A) Prior to final confirmation by the customer that they wish to enroll with the REP, the REP shall, at a minimum:

*(i)* obtain the customer's billing name, billing address, and service address;

*(ii)* obtain the customer's ESI-ID, if available;

*(iii)* ask the applicant, "do you agree to establish new electric service or change your electric service from the current REP to (the new REP)?" and the applicant must answer affirmatively;

*(iv)* ask the applicant, "do you agree to designate (the new REP) to perform the necessary tasks to complete a switch or move in for your electric service with (the new REP)?" and the applicant must answer affirmatively;

*(v)* ask the applicant, "do you want to receive information in English, Spanish (or the language used in the marketing of service to the applicant)?" The REP shall provide a means of obtaining and recording a customer's language preference; and

*(vi)* obtain one of the following account holder verification data: last four digits of the social security number, mother's maiden name, city or town of birth, or month and day of birth.

(B) In the event the applicant does not consent to or does not provide any of the information listed in subparagraph (A) of this paragraph, the enrollment shall be deemed invalid and the REP shall not submit a switch or move-in request for the customer's service.

(C) Any independent third party that verifies enrollment with a REP shall:

*(i)* not be owned, operated, or directly controlled by the REP or the REP's marketing agent;

*(ii)* not have financial incentive to confirm change orders;

*(iii)* be operated in a location physically separate from the REP or the REP's marketing agent; and

*(iv)* not dispense information about the REP or its services.

(i) Record retention.

(1) A REP or aggregator shall maintain non-public records of each customer's authorization and verification of enrollment for 24 months from the date of the REP's initial enrollment of the customer and shall provide such records to the customer, commission staff, and the Office of Public Utility Counsel (OPUC) upon request.

(2) A REP or an aggregator shall submit copies of its sales script, contract, terms of service document, and any other materials used to obtain a customer's authorization or verification to the commission staff or OPUC upon request. In the event commission staff or OPUC request documents under this subsection, the requested records must be delivered to the commission staff or OPUC within 15 days of the written request, unless otherwise agreed to by commission staff or OPUC.

(3) In the event a customer disputes an enrollment or switch, the REP shall provide to the customer proof of the customer's authorization within five business days of the customer's request.

(j) Right of rescission. A REP shall promptly provide the customer with the terms of service document after the customer has authorized the REP to provide service to the customer. For switch requests, the REP shall offer the customer a right to rescind the authorization

to switch without penalty or fee of any kind for a period of three federal business days after the customer's receipt of the terms of service document. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service will be received by the customer within three federal business days. Any REP receiving an untimely notice of rescission from the customer shall inform the customer that the customer has a right to select another REP and may do so by contacting that REP. The REP shall also inform the customer that the customer will be responsible for charges from the REP for service provided until the customer switches to another REP.

(k) Submission of customer's switch request to the registration agent. A REP may submit a customer's switch request to the registration agent prior to the expiration of the rescission period prescribed by subsection (j) of this section. Additionally, the REP shall submit the move-in or switch request to the registration agent so that the move-in or switch will be processed on the approximate scheduled date agreed to by the customer and as allowed by the tariff of the transmission and distribution utility, municipally owned utility, or electric cooperative. The customer shall be informed of the approximate scheduled date that the customer will begin receiving electric service from the REP, and of any delays in meeting that date.

(l) Duty of the registration agent. When the registration agent receives a move-in or switch request from a REP, the registration agent shall process that request in accordance with the protocols.

(1) Switches. The registration agent shall send a switch notification notice that shall:

(A) be sent in English and Spanish consistent with §25.473(d) of this title (relating to Non-English Language Requirements);

(B) identify the REP that initiated the switch request;

(C) inform the customer that the customer's REP will be switched unless the customer requests the registration agent to cancel the switch by the date stated in the notice;

(D) provide a cancellation date by which the customer may request a switch to be cancelled, no less than seven calendar days after the customer receives the notice; and

(E) provide instructions for the customer to request that the switch be cancelled. These instructions shall include a telephone number, facsimile machine number, and e-mail address to reach the registration agent. The registration agent shall take appropriate actions to process a customer's timely request for cancellation.

(2) The registration agent shall direct the transmission and distribution utility to implement any switch, move-in or transfer to the affiliated REP or the provider of last resort (POLR) in accordance with the protocols established by the registration agent, unless the customer makes a timely request to cancel the transaction.

(m) Exemptions for certain transfers. The provisions of this section relating to authorization and right of rescission are not applicable when the applicant's or customer's electric service is:

(1) transferred to the affiliated REP by a REP for non-payment pursuant to §25.482 of this title (relating to Termination of Service);

(2) transferred to the POLR pursuant to §25.43 of this title (relating to Provider of Last Resort (POLR)) when the customer's REP of record defaults or otherwise ceases to provide service. Nothing in this subsection implies that the customer is accepting a contract with the POLR for a specific term;

(3) transferred to the competitive affiliate of the POLR pursuant to §25.43(o) of this title;

(4) transferred to another REP in accordance with section §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another); or

(5) transferred from one premise to another premise without a change in REP and without a material change in the terms of service.

(n) Fees. A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless the applicant requests a switch that does not conform with the normal meter reading and billing cycle. Such fee shall not exceed the rate charged by the transmission and distribution utility for an out-of-cycle meter reading. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent. The transmission and distribution utility may charge a fee for connection of service and such fee may be passed on to the applicant or customer by the REP. In addition, the REP may pass through to the applicant or customer any charges assessed by the transmission and distribution utility for changes to or cancellation of service orders made at the applicant's or customer's request.

*§25.475. Information Disclosures to Residential and Small Commercial Customers.*

(a) Applicability. The requirements of this section apply to retail electric providers (REPs) and aggregators, when specifically stated, providing service to residential and small commercial customers.

(b) [~~(a)~~] General disclosure requirements. All printed advertisements, electronic advertising over the Internet, direct marketing materials, billing statements, terms of service documents, and Your Rights as a Customer disclosures distributed by REPs [~~retail electric providers (REPs)~~] and aggregators:

(1) shall be provided in a readable format, written in clear, plain, easily understood language;

(2) shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law; and

(3) upon receipt of a license or certificate from the commission, shall include the REP's [~~REPs~~] certified name or the aggregator's [~~aggregators~~] registered name, and the number of the license or registration[~~, plan name, and name of the product offered~~].

(c) [~~(b)~~] Advertising and marketing materials.If a REP or aggregator advertises or markets the specific benefits of a particular plan or product to a customer, then the REP or aggregator shall provide the plan name and name of the product offered in the advertising or marketing materials.

(1) Print advertisements. Print [~~Except as otherwise provided by this section,~~] advertisements and marketing materials, including direct mail solicitations [~~other than television or radio~~], that make any specificclaims regarding price[~~, cost competitiveness,~~] or environmental quality for an electricity product of the REP with respect to a product offered by another REP shall include the Electricity Facts Label [~~label~~]. In lieu of including an Electricity Facts Label [~~label~~], the following statement shall [~~may~~] be provided: "You may obtain important standardized information that will allow you to compare this product with other offers. Call [~~For a copy of important standardized information and contract terms regarding this product, call~~] (name, telephone number, and website (if available) of the REP)." A REP shall provide [~~a terms of service document, which includes~~] an Electricity Facts Label (and terms of service document if requested by the customer) [~~label~~],

relating to a [~~the~~] service or product being advertised to each person who requests it [~~contacts the REP in response to this statement~~].

(2) Television and radio advertisements. A REP shall include the following statement in any television or radio advertisement that makes a specific claim about price[~~, cost competitiveness,~~] or environmental quality for an electricity product of the REP with respect to a product offered by another REP: "You can obtain important standardized information that will allow you to compare [~~the price and terms of~~] this product with other offers. Call (name, telephone number and website (if available) of the REP)." This statement is not required for general statements regarding savings or environmental quality, but shall be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. A REP shall provide [~~a terms of service document, which includes~~] an Electricity Facts Label (and terms of service if requested by the customer) [~~label~~], to each person who requests it [~~contacts the REP in response to this statement~~].

(3) Internet advertisements. Advertisements on the internet shall comply with the provisions of paragraph (2) of this subsection. Each REP shall prominently display the Electricity Facts Label for any products offered by the REP for enrollment on the website without the consumer having to enter any personal information other than zip code and type of service being sought (residential or commercial). The Electricity Facts Label shall be printable in a one-page format.

(4) Outdoor advertisements. Advertisements on outdoor signs such as billboards shall comply with the provisions of paragraph (2) of this subsection.

(d) [~~(c)~~] Terms of service document.

(1) For each electric service or electric product that it offers to residential or small commercial customers, a REP shall create a terms of service document. Each terms of service document shall be subject to review by the commission and shall be furnished to the commission or its staff upon request.

(2) For services and products that a REP makes widely available to residential and small commercial customers, a [~~A~~] REP shall assign an identification [~~a~~] number to each version of its terms of service document, and shall publish the number on the terms of service document.

(3) [~~(2)~~] The terms of service document shall be provided to new customers and, if the service or product is being made widely available to residential and small commercial customers, to any eligible customer that requests the terms of service. An updated terms of service document[~~. It~~] shall also be provided to current customers at any time that the REP materially changes the terms and conditions of service with its customers. Upon request, a customer may [~~customers are entitled to~~] receive an additional copy of the terms of service document under which it is receiving service.

[(3) A REP, other than a municipally owned utility or an electric cooperative, shall furnish its terms of service documents to the commission upon the commission's request.]

(4) A REP shall retain [~~maintain~~] a copy of each version of the [~~customer's~~] terms of service during the time that the plan is offered and [~~document~~] for two years after that version of the terms of service is no longer offered and no customer is being served under that version of the terms of service [~~expire~~].

(5) The following information shall be conspicuously contained [~~presented~~] in the terms of service document:

(A) The REP's certified name, mailing address, Internet website address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference);

(B) The Electricity Facts Label [~~label~~] as specified in subsection (f) [~~(e)~~] of this section, which may be provided with the terms of service document;

(C) A statement as to whether there is a minimum [~~contract~~] term of service, any automatic renewal provisions, how service can be cancelled, and any fees associated with cancellation of service;

(D) A statement as to whether there are penalties to terminate [~~cancel~~] service before the end of the minimum term of service [~~the contract,~~] and the amount of those penalties, and whether there are any conditions under which those penalties will not apply;

(E) If the REP requires deposits from its customers, a description of the conditions that will trigger a request for a deposit, the maximum amount of the deposit, or the manner in which the deposit amount will be determined, a statement that interest will be paid on the deposit at the rate approved by the commission [~~including the amount of the interest that will be paid~~], and the conditions under which the customer may obtain a refund of a deposit;

(F) The description [~~itemization~~] of any charges resulting from a move-in or switch that must be paid by the customer, including but not limited to an out-of-cycle meter read, credit application fee, and connection or reconnection fees [~~before service is initiated or switched~~];

(G) The itemization of any services that are included in the customer's terms of service [~~contract~~], including:

*(i)* the specific methods and prices [~~rates~~] by which the customer will be charged for electric service [~~and how such charges will appear on the customer's electric bill;~~] and

*(ii)* the price [~~cost~~] for each service or product other than electric service [~~and how such charges will appear on the customer's electric bill~~]. If a REP [~~competitive retailer~~] has bundled the charges for these other services together, the total price [~~cost of all charges~~] for services other than electric service [ ~~and how such charge will appear on the customer's electric bill~~];

(H) The itemization of any charges and fees that may be imposed on the customer, such as charges and fees [~~during the period of the contract~~] for default, late payment, [~~switching fees, late fees, fees that may be charged to the customer for~~] returned checks, cancellation of service, termination of service, and collection of outstanding balance; [~~fees charged for early termination of the contract, collection costs imposed on the customer if the customer defaults, and any other non-recurring fees and charges~~];

(I) A description of [~~The policies of the REP regarding~~] payment arrangements and bill payment assistance programs offered by the REP[~~, late payments, payments in dispute and defaults by the customer~~];

(J) All other material terms and conditions, including, without limitation, exclusions, reservations, limitations, and conditions of the terms of [~~contract for~~] services offered by the REP;

(K) In a conspicuous and separate paragraph or box:

*(i)* A description of the right of a new customer to rescind service [~~cancel a contract~~] without fee or penalty of any kind within three federal business days after receiving the terms of service document pursuant to §25.474(j) of this title (relating to Selection of Retail Electric Provider); and [~~sent to the customer after the REP has~~

~~obtained the customer's authorization to provide service to the customer;~~]

*(ii)* Detailed instructions for rescinding service [~~canceling a contract~~], including the telephone numberand, if available, facsimile machine number or [~~and~~] e-mail address that the customer may use to rescind service. [~~cancel the contract; and~~]

~~*[(iii)* Any information on automatic contract renewal that applies;~~]

(L) A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically distressed geographic area, or qualification for low income or energy efficiency services; and

~~[(M) A statement that bill payment assistance for customers is offered by the REP and that additional information may be obtained by contacting the REP; and ]~~

(M) [~~(N)~~] A statement that price [~~rate~~] reductions for qualified, low-income residential [~~low income~~] customers are offered by the REP and how to apply for the program.

(e) [~~(d)~~] Notice [~~Minimum notice~~] of changes in terms and conditions[~~, contract, and terms~~] of service.

(1) [~~Change in terms and conditions.~~] A REP shall provide written notice to its customers at least 45 days in advance of any material change in the terms of service document. The notice shall identify the material change and clearly specify what actions the customer needs to take to terminate the terms of service agreement without a penalty [~~terminate the contract~~], the deadline by which such action must be taken, and the ramifications if such actions are not taken within the specified deadline. This notice may be provided in or with the customer's bill or in a separate document, but shall be clearly and conspicuously labeled with the following statement: "Important notice regarding changes to your terms of service [~~electric service contract~~]." The notice shall clearly state that the customer may decline any material change in the terms of service and terminate the terms of service agreement [~~cancel the contract~~] without a penalty. Notice of the change is not required [~~the customer's option to decline is not necessary~~] for material changes that benefit [~~favor~~] the customer or for changes that are mandated by a regulatory agency. Notice is not required for changes in rates if the terms of service clearly specify the manner in which rates may be adjusted (i.e., variable rate products).

(2) Automatic renewal clauses. A REP may utilize an automatic renewal clause. Any service [~~contract~~] renewed through the activation of an automatic renewal clause shall be in effect for a maximum of 31 [~~30~~] days and such clause may be repeatedly activated unless cancelled by the customer or the REP materially changes the terms of service.

(f) [~~(e)~~] Electricity Facts Label [~~label~~].

(1) Pricing disclosures. Pricing information disclosed by a REP in an Electricity Facts Label [~~label~~] shall include:

(A) For the total cost of electric services, exclusive of applicable taxes:

*(i)* If the billing is based on prices [~~rates~~] that will not vary by season or time of day, the total average price for electric service reflecting all recurring charges, including generation, transmission and distribution, and other flat rate charges expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for the following usage levels [~~each usage level as follows~~]:

*(I)* For[~~The average price for~~] residential customers, [~~shall be shown for~~] 500, 1,000, and 1,500 kilowatt hours per month; and

*(II)* For [~~The average price for~~] small commercial customers, [~~shall be shown for~~] 1,500, 2,500, and 3,500 kilowatt hours per month;

*(ii)* If the billing is based on prices [~~rates~~] that vary by season or time of day, the average price for electric service, reflecting all recurring charges and based on the applicable load profile approved by the commission, expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for each usage level as follows:

*(I)* For [~~The average price for~~] residential customers, [~~shall be shown for~~] 500, 1,000, and 1,500 kilowatt hours per month; and

*(II)* For [~~The average price for~~] small commercial customers, [~~shall be shown for~~] 1,500, 2,500, and 3,500 kilowatt hours per month;

*(iii)* If a REP [~~competitive retailer~~] combines the charges for electric service with charges for any other product, the REP [~~competitive retailer~~] shall:

*(I)* If the electric services are sold separately from the other products, disclose the total price for electric service separately from other products; and

*(II)* If the REP [~~competitive retailer~~] does not permit a customer to purchase the electric service without purchasing the other products, state the total charges for all products as the price of the total electric service.

(B) If the pricing plan includes [~~envisions~~] prices that will vary according to the season or time of day, the statement: "This price disclosure is an example based on average usage patterns--your actual [~~average~~] price for electric service may be different depending on how and [~~will vary according to~~] when you use electricity. [~~See the terms of service document for actual prices.~~]"

(C) If the pricing plan envisions prices that will vary during the term of the service [~~contract~~] because of factors other than season and time of day, the statement: "This price disclosure is an example based on average service [~~contract~~] prices--your average price for electric service will vary according to your usage and (insert description of the basis for and the frequency of price changes during the service [~~contract~~] period). [~~See the terms of service document for actual prices.~~]"

(D) If the price of electric service will not vary, the phrase "fixed price" and the length of time for which the price will be fixed; [~~and~~]

(E) If the price of electric service will vary, the phrase "variable price" and a description of how the prices will change and when; and [~~is based on the season or time of day, the on-peak seasons or times and the associated rates.~~]

(F) The criteria used to calculate the average pricing disclosures for residential customers.

(2) Service [~~Contract~~] terms disclosures. Specific service [~~contract~~] terms that shall be disclosed on the Electricity Facts Label [~~label~~] are:

(A) The minimum service [~~contract~~] term, if any; and

(B) Early termination penalties, if any.

(3) Fuel mix disclosures. The Electricity Facts Label [~~label~~] shall contain a table depicting, on a percentage basis, the fuel mix of the electricity product supplied by the REP in Texas. The table shall also contain a column depicting the statewide average fuel mix. The break-down for both columns shall provide percentages of net system power generated by the following categories of fuels: coal and lignite; natural gas; nuclear; renewable energy (comprising biomass power, hydropower, solar power and wind power); and other sources. Fuel mix information shall be based on generation data for the most recent calendar year.

(A) The percentage used shall be rounded to the nearest whole number. Values less than 0.5% and greater than zero may be shown as "<0.5%".

(B) Any source of electricity that is not used shall be listed in the table and depicted as "0.0%".

(4) Emissions [~~Air emissions~~] and waste disclosures. The Electricity Facts Label [~~label~~] shall contain a bar chart that depicts the amounts of carbon dioxide, nitrogen oxide, sulfur dioxide, [~~and~~] particulate emissions and nuclear waste attributable to the aggregate known sources of electricity identified in paragraph (3) of this subsection. Emissions and waste disclosures shall be based on data for the most recent calendar year.

(A) Emission rates for carbon dioxide, nitrogen oxide, sulfur dioxide and particulates shall be calculated in pounds per 1,000 kilowatt-hours (lbs/1,000 kWh), divided by the corresponding statewide system average emission rates, and multiplied by 100 to obtain indexed values.

(B) Rates for nuclear waste shall be calculated in pounds of spent fuel per 1,000 kilowatt-hours, divided by the corresponding statewide system average rate, and multiplied by 100 to obtain indexed values.

(C) The registration agent [~~commission~~] shall calculate the statewide system average rates to be used in accordance with this subsection.

(5) Renewable energy claims. A REP may verify its sales of renewable energy by requesting that the program administrator of the renewable energy credits trading program established pursuant to §25.173(d) of this title (relating to Goal for Renewable Energy) retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers.

(6) Format of Electricity Facts Label [~~label~~]. Each Electricity Facts Label [~~Fact label~~] shall be printed in type no smaller than ten points in size and shall be formatted as shown in this paragraph [~~below~~]:

Figure: 16 TAC §25.475(f)(6)

(7) Distribution of Electricity Facts Label [~~label~~]. A [~~Beginning July 1, 2002, a~~] REP shall distribute its Electricity Facts Label [~~label~~] to its customers no less than once in a 12-month period and to the commission upon request. A REP is not required to distribute its Electricity Facts Label to its customers pursuant to this paragraph if it has provided a new Electricity Facts Label to its customers in the past six months. [~~with its January and July billings (or as a separate mailing). Additionally, a REP shall provide the commission with an electronic version of each Electricity Facts label the REP distributes to customers. The commission shall make each label available to the public in a non-preferential manner over the Internet.~~]

(g) [~~(f)~~] Your Rights as a Customer disclosure. In addition to the terms of service document required by this section, a REP shall develop a separate disclosure statement for residential customers and small commercial customers entitled "Your Rights as a Customer" that summarizes the standard customer protections provided by the rules in this subchapter.

(1) This disclosure shall initially be distributed at the same time as the REP's terms of service document and shall accurately reflect the REP's terms of service.

(2) The REP shall distribute an update of this disclosure no less than once in a 12-month period [~~once annually~~] to its customers.

(3) Each REP's Your Rights as a Customer disclosure is [~~shall be~~] subject to review and approval by the commission, upon request.

(4) The disclosure shall inform the customer of the following:

(A) The REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling);

(B) The customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the customer's right to be instructed on [~~by the REP~~] how to read the meter, if applicable;

(C) Disclosures concerning the customer's ability to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);

(D) Notice of any special services such as readers or notices in Braille or TTY services for hearing impaired customers;

(E) Special actions or programs available to those residential customers with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems;

(F) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);

(G) Cancellation of terms of service with or without penalty;

(H) Unauthorized switch [~~Slamming~~] protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider) [~~§25.474(n) of this title (relating to Selection or Change of Retail Electric Provider)~~];

(I) Protections relating to termination [~~Termination~~] of service protections pursuant to §25.482 of this title (relating to Termination of Service [~~Contract~~]) and disconnection of service [~~by the provider of last resort (POLR)~~] pursuant to §25.483 of this title (relating to Disconnection of Service);

(J) Availability of financial and energy assistance programs for residential customers;

(K) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Do Not Call List) and §26.37 (relating to Texas No-Call List);

(L) Availability of discounts for qualified low-income residential [~~low income~~] customers;

(M) Payment arrangements and deferred payments pursuant to §25.480 of this title (relating to Bill Payment and Adjustments);

(N) Procedures for reporting outages;

(O) Privacy rights regarding customer specific information as defined by §25.472 of this title (relating to Privacy of Customer Information);

(P) Availability of POLR service and how to contact the POLR[~~, including the POLR's toll-free telephone number~~]; and

(Q) The [~~the~~] steps necessary to have service restored or reconnected after involuntary suspension or disconnection.

*§25.476. Labeling of Electricity with Respect to Fuel Mix and Environmental Impact.*

(a) Purpose. The purpose of this section is to establish the procedures by which retail electric providers (REPs) [~~competitive retailers~~] calculate and disclose fuel mix and environmental impact information on the Electricity Facts Label [~~label~~] pursuant to §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers).

(b) Application.

(1) This section applies to all REPs [~~competitive retailers and affiliated retail electric providers (affiliated REPs) as defined in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules)~~]. Additionally, some of the reporting requirements established in this section apply to all owners of generation assets as defined in subsection (c) of this section.

(2) Nothing in this section shall be construed as protecting a [~~competitive retailer or affiliated~~] REP against prosecution under deceptive trade practices statutes.

(3) In accordance with the Public Utility Regulatory Act (PURA) §39.001(b)(4), the commission and the registration agent will protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information, including without limitation information reported to the commission or the registration agent pursuant to subsections (e)(3)-(4) and (f)(1) of this section [~~during the transition to a competitive market and after the commencement of customer choice~~].

(c) Definitions. The definitions set forth in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules) apply to this section. In addition, the following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise:

(1) Authenticated generation--Generated electricity with quantity, fuel mix, and environmental attributes accounted for by a retired renewable energy credit (REC), or supply contract between a [~~competitive retailer or affiliated~~] REP and an owner of generation assets, to be used in calculating the retailer's Electricity Facts Label [~~label~~] disclosures.

(2) Default scorecard--The estimated fuel mix and environmental impact of all electricity in Texas that is not authenticated as defined in paragraph (1) of this subsection.

~~[(3) Electricity Facts label--A standardized format, as described in §25.475(e) of this title, for disclosure information and contract terms made available to customers to help them choose a provider and an electricity product.]~~

~~[(4) Electricity product--A product offered by a competitive retailer or affiliated REP to a customer for the provision of retail electric service under specific terms and conditions, and marketed under a specific Electricity Facts label.]~~

(3) [~~(5)~~] Environmental impact--The information that is to be reported on the Electricity Facts Label [~~label~~] under the heading "Emissions [~~emissions~~] and waste per kWh generated," comprising indicators for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear reactor fuel. For the purposes of this section, environmental impact refers specifically to emissions and waste from generating facilities located in Texas, except as provided in subsection (f)(3) of this section.

(4) [~~(6)~~] Fuel mix--The information that is to be reported on the Electricity Facts Label [~~label~~] under the heading "Sources [~~sources~~] of power generation." The fuel mix shall be the percentage of total MWh obtained from each of the following fuel categories: coal and lignite, natural gas, nuclear, renewable energy, and "other" sources, calculated as specified in this section [~~and other known sources~~]. Renewable energy shall include power defined as renewable by PURA [~~the Public Utility Regulatory Act (PURA)~~] §39.904(d).

(5) [~~(7)~~] Generator scorecard--The aggregated fuel mix and environmental impact of all generating facilities located in Texas that are owned [~~held~~] by the same owner of generation assets.

(6) [~~(8)~~] New product--An electricity product during the first year it is marketed to customers.

(7) [~~(9)~~] Other generation sources--A competitive retailer's or affiliated REP's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.

(8) [~~(10)~~] Owner of generation assets--A power generation company, river authority, municipally owned utility, electric cooperative, or any other entity that owns electric [~~or controls~~] generating facilities in the state of Texas.

~~[(11) Renewable energy credit (REC)--A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by PURA §39.904 and implemented under §25.173 of this title (relating to the Goal for Renewable Energy).]~~

(9) [~~(12)~~] Renewable energy credit offset (REC offset)--A non-tradable allowance as defined by §25.173(c)(10) of this title (relating to Goal for Renewable Energy) and created by §25.173(i) of this title. For the purposes of this section, a REC offset authenticates the renewable attributes, but not the quantity, of generation produced by its associated facility.

(d) Marketing standards for "green" and "renewable" electricity products.

(1) A [~~competitive retailer or affiliated~~ ] REP may market an electricity product as "green" only in the following instances:

(A) All of the product's fuel mix is renewable energy as defined in PURA §39.904(d), Texas natural gas as specified in PURA §39.9044(d)(2), or a combination thereof, and

(B) All statements representing the product as "green," if not containing 100% renewable energy, as defined in PURA §39.904(d), shall include a footnote, parenthetical note, or other obvious disclaimer that "A 'green' product may include Texas natural gas and renewable energy. See the Electricity Facts Label [~~label~~] for this product's exact mix of renewable energy and Texas natural gas."

(2) A [~~competitive retailer or affiliated~~] REP may market an electricity product as "renewable" only in the following instances:

(A) All of the product's fuel mix is renewable energy as defined in PURA §39.904(d); or

(B) All statements representing the product as "renewable" use the format "x% renewable," where "x" is the product's renewable energy fuel mix percentage.

(3) If a [~~competitive retailer or affiliated~~] REP makes marketing claims about a product's "green" content on the basis of its use of natural gas as a fuel, the [~~competitive retailer or affiliated~~] REP must include with the report required under subsection (f)(1) of this section proof that the natural gas used to generate the electricity was produced in Texas.

(e) Compilation of scorecard data.

(1) The registration agent shall [~~The commission will~~] create and maintain a database of generator scorecards reflecting each owner of generation assets' company-wide fuel mix and environmental impact data based on generating facilities located in Texas. These scorecards shall be used by [~~competitive retailers and affiliated~~] REPs in determining the fuel and environmental attributes of electricity sold to retail customers.

(2) Each generator's fuel mix and environmental impact data for the preceding calendar year shall [~~Initial generator scorecards based on the best available data will~~] be published on the registration agent's Internet [~~the commission's internet~~] web site by April 1 of each year and shall state:

(A) percentage of MWh generated from each of the following fuel sources: [~~obtained from each fuel source (~~]coal and lignite, natural gas, nuclear, renewable energy, and other sources; and [~~), and the corresponding percentages of total MWh;~~]

(B) MWh-weighted average annual emissions rates in pounds per 1,000 kWh for the aggregate generation sources of the owner of generation assets for [~~tons of~~] carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear fuel produced (with spent nuclear fuel annualized using standard industry conversion factors). [~~, and the corresponding emission rates in tons per MWh; and~~]

[~~(C) sources from which data were obtained, including year of publication and year of generation.~~]

(3) Not later than March 1 of each year, each owner of generation assets shall report to the registration agent the following data for the preceding calendar year: net generation in MWh from each of its generating units in Texas; the type of fuel used by each of its generating units in Texas; and the MWh-weighted average annual emissions rate, on an aggregate basis for all of its generating units in Texas (in pounds per 1,000 kWh) for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and nuclear waste. For purposes of calculating its average emissions rates, each owner of generation assets shall rely upon emissions data that it submits to the United States Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), or the best available data if the owner of generation assets does not submit pertinent data to the EPA or TCEQ. An owner of generation assets shall not be required to submit information to the registration agent regarding the net generation of its generating units located within the Electric Reliability Council of Texas (ERCOT) region if, upon request, the registration agent advises the owner of generation assets that it already has such information available from its polled settlement meter data. [~~Each generator will have one month to review its initial scorecard data prior to publication on the commission's web site. The commission will accept changes reflecting retirement of facilities, the addition of new facilities, the sale or purchase of facilities, verified changes in a facility's emission rates and fuel use, and the correction of administrative errors.~~]

(4) Not later than March 15 of each year, each REP shall report to the registration agent the total MWh of electricity it purchased during the preceding calendar year, specifying the quantity purchased from each owner of generation assets or from other generation sources during that calendar year. [~~Not later than March 1 and September 1 of each year, the commission will adjust all generator scorecards to deduct the MWh and associated attributes of:~~]

[~~(A) power for which a REC has been issued; and ~~]

[~~(B) power from facilities that have been designated by the commission as REC offset generators. ~~]

[~~(5) Not later than March 1 and September 1 of each year, the commission will calculate a combined scorecard for all generating units whose capacity will be auctioned under §25.381(e)(1)(A) of this title (relating to Capacity Auctions), and a combined scorecard for all generating units whose capacity will be auctioned under §25.381(e)(1)(B)-(D) of this title.~~]

(5) [~~(6)~~] Not later than April 1 [~~March 1 and September 1~~] of each year, the registration agent shall [~~the commission will~~] calculate and publish on its Internet website a state average fuel mix, emission rate threshold values as described in this paragraph, and a default scorecard to account for all electric generation in the state that is not authenticated as defined in subsection (c)(1) of this section.

(A) The default fuel mix shall be the percentage of total MWh of generation not authenticated that has been obtained from each fuel type.

(B) Default emission rates for each type of emission [~~environmental criterion~~] shall be calculated by dividing total pounds [~~tons~~] of emissions or waste by total MWh, using data only for generation not authenticated.

[~~(7) The commission will include the adjusted generator scorecards, capacity auction scorecards and the default scorecard on the reporting forms to be used by competitive retailers and affiliated REPs to calculate their Electricity Facts label disclosures. The adjusted generator scorecard shall include a statement that the data may differ from the unadjusted scorecard and shall include a reference to the commission's web site for additional information.~~]

(f) Calculating fuel mix and environmental impact disclosures.

(1) Not later than March 15 [~~February 1 and August 1~~] of each year, each [~~competitive retailer and affiliated~~] REP shall report to the commission the following information [~~for the previous six-month period ending December 31 or June 30~~]:

[~~(A) all owners of generation assets, other entities and capacity auctions from which the competitive retailer or affiliated REP purchased electricity for delivery to customers during the previous calendar year and the MWh obtained from each supplier, with sources that together supplied less than 5.0% of the competitive retailer's electricity combined and treated as other generation sources;~~]

(A) [~~(B)~~] MWh sold under each electricity product offered by the [~~competitive retailer or affiliated~~] REP during the previous calendar year; and

(B) [~~(C)~~] attestations from power generators that the natural gas used to generate electricity supplied to the [~~competitive retailer or affiliated~~] REP was produced in Texas, if during the preceding calendar year and the current calendar year the REP markets [~~the competitive retailer or affiliated REP intends to market~~] "green" electricity on the basis of that power.

(2) Not later than May 1 [~~April 1 and October 1~~] of each year, each [~~competitive retailer and affiliated~~] REP shall calculate and report to the registration agent its fuel mix and environmental impact for the preceding calendar year for each of its electricity products. The

calculation methodology shall be as described in paragraphs (5) and (6) of this subsection. [~~previous six-month period ending December 31 or June 30. Calculations shall include a disclosure that aggregates all electricity products offered by the competitive retailer, and specific disclosures for each electricity product. Disclosures provided on an Electricity Facts label shall describe a specific electricity product sold to customers during the previous six-month period ending December 31 or June 30, except as provided in paragraph (9) of this subsection.~~]

(3) For power purchased from sources outside of Texas, a supply contract between a [~~competitive retailer or affiliated~~ ] REP and the owner of a generating facility may be used to authenticate fuel mix and environmental impact for electricity generated at that facility and sold at retail in Texas [~~environmental impact claims~~].

(A) The contract must identify a specific generating facility from which the [~~competitive retailer or affiliated~~] REP has obtained [~~is to obtain~~] electricity that it sold to retail customers in Texas during the preceding calendar year.

(B) A REP that intends to rely upon a supply contract with an out-of-state generator to authenticate fuel mix or environmental impact data shall submit a report to the registration agent for the specified generating facility no later than March 1 of each year that reports the facility's annual fuel mix and emissions rates (in pounds per 1,000 kWh) for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and nuclear waste. [~~The competitive retailer or affiliated REP shall include fuel mix and environmental impact information for the specified generating facility in its report to the commission pursuant to paragraph (1) of this subsection. Data shall come from the same sources used by the commission as reported pursuant to subsection (e)(2)(C) of this section. If the generating facility is not included in any database used by the commission, the retailer and the generating facility owner may provide other comparable public data that have been reported to a federal or state agency for the specified facility.~~]

(4) For the purposes of disclosures on the Electricity Facts Label [~~label~~], the retirement of RECs shall be the only method of authenticating generation for which a REC has been issued in accordance with §25.173 of this title. The retirement of a REC shall be equivalent to one megawatt-hour of generation from renewable resources. The use of RECs to authenticate the use of renewable fuels on the Electricity Facts Label [~~label~~] must be consistent with REC account information maintained by the Renewable Energy Credits Trading Program Administrator. A REC offset may be used to authenticate the renewable attributes of the current MWh output from its associated supply contract.

(5) The fuel mix for a REP's electricity product [~~A competitive retailer's or affiliated REP's company fuel mix~~] shall be the MWh-weighted average of the fuel mixes reported for the sources of generation from which electricity was purchased for that product. In calculating the fuel mix, the REP shall rely upon the following sources of information to obtain the fuel mix of its sources of generation: the generator scorecard data published by the registration agent under subsection (e)(2)(A) of this section; the default scorecard published by the registration agent under subsection (e)(5)(A) of this section; any reports filed under paragraph (3)(B) of this subsection; retired RECs; and REC offsets [~~represented by the adjusted scorecards of its suppliers, scorecards for successfully bid capacity auctions, out-of-state supply contracts, retired RECs, REC offsets and the default scorecard~~]. MWh from generation sources not authenticated in accordance with this section shall be represented by the fuel mix of the default scorecard.

(6) The emission rates for a REP's electricity product shall be the MWh-weighted average of the emission rates reported for the sources of generation from which electricity was purchased for that product. In calculating the emissions data, the REP shall rely upon the following sources of information to obtain the emissions data of its sources of generation: the generator scorecard data published by the registration agent under subsection (e)(2)(B) of this section; the default scorecard published by the registration agent under subsection (e)(5)(B) of this section; and any reports filed under paragraph (3)(B) of this subsection. [~~A competitive retailer's or affiliated REP's company environmental impact shall be the MWh-weighted average of the emission rates represented by the adjusted scorecards of its suppliers, scorecards for successfully bid capacity auctions, out-of-state supply contracts, retired RECs, REC offsets and the default scorecard.~~] Emissions [~~of MWh~~] from generation sources not authenticated in accordance with this section shall be represented by the default scorecard. The weighted average of each category of environmental impact shall then be indexed by dividing it by the corresponding state average emission rate and multiplying the result by 100.

(7) If a [~~competitive retailer or affiliated~~] REP offers multiple electricity products that differ with regard to the fuel mix and environmental impact disclosures presented on the Electricity Facts Label, the REP [~~labels, the retailer~~]:

(A) may apply any supply contract to the calculation of any product label as long as the sum of MWh applied does not exceed the MWh acquired under the contract; and

(B) may apply any number of RECs to the calculation of any product label as long as:

*(i)* the number of RECs applied to all product labels is consistent with the number of RECs the retailer has retired with the REC Trading Program Administrator, and

*(ii)* the number of RECs applied to each product label results in a renewable energy content for each product that is equal to or greater than a benchmark to be calculated from data maintained by the REC Trading Program Administrator. The benchmark shall be defined on an annual basis as:
Figure: 16 TAC §25.476(f)(7)(B)(ii)

(8) An affiliated REP shall use only one fuel mix and environmental impact disclosure for all price-to-beat products sold to residential and small commercial customers of its affiliated transmission and distribution utility, except that if the predecessor bundled utility had an approved renewable energy tariff in accordance with §25.251 of this title (relating to Renewable Energy Tariff) on file with the commission during the freeze on existing retail base rate tariffs established by PURA §39.052, the affiliated REP may sell a renewable price-to-beat [~~Price-to-Beat~~] product.

(9) Any [~~A competitive retailer or affiliated~~] REP may anticipate the fuel mix and environmental impact of a new product [~~and adjust the disclosures for its existing products to account for the new product's projected sales~~].

(A) On the fuel mix disclosure of a new product's Electricity Facts Label [~~label~~], the heading "Sources of power generation" shall be replaced with "Projected sources of power generation."

(B) On the environmental impact disclosure of a new product's Electricity Facts Label [~~label~~], the heading "Emissions and waste per 1,000 kWh generated" shall be replaced with "Projected emissions and waste per 1,000 kWh generated."

[~~(C) The competitive retailer or affiliated REP shall exercise due diligence in its acquisition of purchased power throughout the year so that the fuel mix and environmental impact authenticated at the end of the year is at least as favorable as what the retailer projected.~~]

(C) [~~(D)~~] A projected fuel mix may be used only for new products[~~, and the projections may not change during the year except as provided in subparagraph (E) of this paragraph~~].

[~~(E) At the end of the first six months that a new product is offered, a retailer may choose to authenticate the product's fuel mix and environmental impact according to the provisions of this section and delete the word "projected" from the Electricity Facts label.~~]

(g) Annual update of Electricity Facts Label. Each REP shall update its Electricity Facts Label for each of its products no later than July 1 of each year, so that the Electricity Facts Label displays the fuel mix and emissions data calculated pursuant to this section and reported to the registration agent for that product under subsection (f)(2) of this section for generation purchased during the preceding calendar year. The commission shall make available on the "power to choose" Internet website the fuel mix and emissions data published by each REP on its Electricity Facts Labels for each product marketed to residential customers. [~~Special provisions for the first year of competition. Each competitive retailer and affiliated REP shall estimate the fuel mix and environmental impact of its electricity products offered to customers during the first year of competition, and shall exercise due diligence in its power acquisitions throughout the year so that the fuel mix verified at the end of the year is at least as favorable as what was projected.~~]

(h) Compliance and enforcement.

(1) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, is in violation of this section, the commission may take remedial action consistent with PURA §§39.101(e), 39.356, or 39.357, and the REP may be subject to administrative penalties pursuant to PURA §15.023 and §15.024. If the commission finds that an electric cooperative or a municipally owned utility is in violation, it shall inform the cooperative's board of directors and general manager, or the municipal utility's general manager and city council.

(2) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, repeatedly violates this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the REP, thereby denying the REP the right to provide service in this state.

(3) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General, Consumer Protection Division [~~office of the attorney general~~] in order to ensure consistent treatment of specific alleged violations.

(4) The commission may inspect and obtain copies of the papers, books, accounts, documents, and other business records of each REP to the extent necessary to verify the accuracy of the REP's Electricity Facts Label.

(5) The commission may inspect and obtain copies of the papers, books, accounts, documents, and other business records of each owner of generation assets to the extent necessary to verify the accuracy of the owner of generation assets' fuel mix and emissions data reported under subsection (e)(3) of this section.

(6) In exercising any enforcement authority, inspection, audit, or other action under this section, the commission will ensure the confidentiality of competitively sensitive information.

*§25.477. Refusal of Electric Service.*

(a) Acceptable reasons to refuse electric service. A retail electric provider (REP) may refuse to provide electric service to an applicant or[~~a~~] customer for one or more of the reasons specified in this subsection:

(1) Customer's or applicant's inadequate facilities [~~inadequate~~]. The customer's or applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given, or the customer's or applicant's facilities do not comply with all applicable state and municipal regulations.

(2) Use of prohibited equipment or attachments. The customer or applicant fails to comply with the transmission and distribution utility's, municipally owned utility's, or electric cooperative's tariff pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.

(3) Intent to deceive. The applicant or customer applies for service at a location where another customer received, or continues to receive, service [~~and the other customer's bill from the REP is unpaid at that location,~~] and the REP can reasonably demonstrate that the change of account holder and billing name is made to avoid or evade payment of a [~~an outstanding~~] bill owed to the REP.

(4) For indebtedness. The applicant or customer owes a bona fide debt to the REP for electric service [~~the same kind of service as that being requested~~]. An affiliated [~~affiliate~~] REP or provider of last resort (POLR) shall offer the applicant or customer an opportunity to pay the outstanding debt to receive service. In the event the applicant's or [~~a~~] customer's indebtedness is in dispute, the applicant or customer shall be provided service upon paying the undisputed debt amount and a deposit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits).

(5) Failure to pay guarantee. An applicant or [~~A~~] customer has acted as a guarantor for another applicant or customer and failed to pay the guaranteed amount, where such guarantee was made in writing and was a condition of service.

(6) Failure [~~Refusal~~] to comply with credit requirements. The applicant or customer fails [~~customer refuses~~] to comply with the credit and deposit requirements set forth in §25.478 of this title.

(7) Other acceptable reasons to refuse electric service. In addition to the reasons specified in paragraphs (1) - (6) of this subsection, a REP other than the affiliated REP or POLR may refuse to provide electric service to an applicant or customer [~~A competitive retailer may refuse to provide electric service to a customer for one or more of the reasons specified in paragraph (1) - (6) of this subsection or~~] for any other reason that is not otherwise discriminatory pursuant to §25.471 of this title (relating to General Provisions of Customer Protection Rules).

(b) Insufficient grounds for refusal to serve. The following reasons are not sufficient cause for refusal of service to an applicant or [~~a~~] customer by a REP:

(1) delinquency in payment for electric service by a previous occupant of the premises to be served;

(2) failure to pay for any charge that is not related to [~~the provision of~~] electric service, including a competitive energy service, merchandise, or other services that are optional and are not included in [~~the~~] electric service [~~provided~~];

(3) failure to pay a bill that includes more than the allowed six months of underbilling, unless the underbilling is the result of theft of service; and

(4) failure to pay the unpaid bill of another customer for usage incurred at the same address, except where the REP has reasonable and specific grounds to believe that the applicant or customer that currently receives service has applied for service to avoid or evade payment of a bill issued to a current occupant of the same address.

(c) Disclosure upon refusal of service.

(1) A REP that refuses electric service to an applicant or customer on the basis of credit shall comply with the Fair Credit Reporting Act (15 U.S.C. §1691(d), *et seq.*) in providing notice to customers. A REP that refuses service for any other reason shall verbally notify the applicant or customer of the specific reasons for the refusal. In addition, upon request by the applicant or customer, a REP shall notify the customer in writing of the reasons for refusal of service [~~denies electric service to a customer shall inform the customer of the reason for the denial. Upon the customer's request, this disclosure shall be furnished in writing to the customer. This disclosure may be combined with any disclosures required by applicable federal or state law~~].

(2) A written [~~This~~] disclosure is not required when the REP notifies the applicant or customer verbally [~~orally~~] that the applicant's or customer's premise [~~customer~~] is not located in a geographic area served by REP, does not have the type of usage characteristics [~~that is~~] served by the REP, or is not part of a customer class served by the REP.

(3) Specifically, the REP shall inform the applicant or customer:

(A) of the specific reasons for the refusal of service;

(B) that the applicant or customer may be eligible for service if the applicant or customer remedies the reasons [~~reason(s)~~] for refusal and complies with the REP's terms and conditions of service;

(C) that the REP cannot refuse service based on the prohibited grounds set forth in §25.471(c) of this title;

(D) that an applicant or [~~a~~] customer who is dissatisfied may submit [~~file~~] a complaint with the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling); and

(E) of the possible availability or [~~and~~] existence of other providers [~~POLR service~~] and the toll-free telephone number designated by the commission to allow the applicant or customer to contact the available REPs [~~POLR~~].

*§25.478. Credit Requirements and Deposits.*

(a) Credit requirements for [~~permanent~~] residential customers. A retail electric provider (REP) may require a residential customer or applicant [~~customers~~] to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

(1) Establishment of satisfactory credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.

(2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(3) A residential customer or applicant seeking to establish service with [~~of~~] an affiliated [~~affiliate~~] REP or provider of last resort (POLR) can demonstrate satisfactory credit using [~~any~~] one of the criteria listed in subparagraphs (A) through (E) [~~(D)~~] of this paragraph. A REP other than an affiliated REP or POLR [~~competitive retailer~~] may establish other criteria by which a customer or applicant can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(A) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant:

*(i)* has been a customer of any REP or an [~~the~~] electric utility [~~(prior to 2002)~~] within the two years prior to the [~~customer's~~] request for electric service;

*(ii)* is not delinquent in payment of any such electric service account; and

*(iii)* during the last 12 consecutive months of service was not late in paying a bill more than once.

(B) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant possesses a satisfactory credit rating obtained through a consumer [~~an accredited credit~~] reporting agency, as defined by the Federal Trade Commission.

(C) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant is 65 years of age or older and the customer's account with an electric utility or any other REP does not currently have a delinquent balance for the same type of service for which the customer or applicant applied [~~the electric utility (prior to 2002) or any other REP has not had a delinquent balance credit if the customer is 65 years of age or older and the customer's incurred within the last 12 months for the same type of service applied for~~].

(D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center or by treating medical personnel. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated [~~affiliate~~] REP or POLR.

(E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually:

*(i)* the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and

*(ii)* the customer or applicant or the [~~customer's~~] spouse of the customer or applicant must have been certified by that person's physician [~~(for the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq*)~~] as being unable to perform three or more activities of daily living as defined in 22 TAC §224.4 [ ~~§218.2~~], or the customer's or applicant's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income. For the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq.*

(F) Pursuant to the Public Utility Regulatory Act (PURA) [PURA] §39.107(g), a REP that [who] requires pre-payment for [by a] metered residential electric service [residential customer as a condition of initiating service] may not charge [the customer] an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.

(G) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. [the customer's previous REP or from an accredited credit reporting agency]. The REP shall obtain the customer's or applicant's authorization [pursuant to §25.474 of this title (relating to Selection or Change of Retail Electric Provider),] prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected [to a customer] in order to be able to provide credit history information at the request of the former customer. [Additionally, a REP may utilize credit reporting agencies to document customers with poor credit/payment histories.]

[(4) If satisfactory credit cannot be demonstrated by the residential customer of an affiliate REP or POLR using these criteria, the customer may be required to pay a deposit pursuant to subsections (c) and (d) of this section.]

(b) Credit requirements for non-residential customers. A REP may establish nondiscriminatory criteria pursuant to §25.471 of this title to evaluate the credit requirements for a non-residential customer or applicant [customers] and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer or applicant using the criteria established by the REP, the customer may be required to pay an initial or additional [a] deposit. No such deposit shall be required if the customer or applicant is a governmental entity.

(c) Initial deposits.

(1) If satisfactory credit cannot be demonstrated by the residential customer or applicant seeking to establish service with an affiliated REP or POLR using the criteria set forth in subsection (a)(3) of this section, the customer or applicant may be required to pay a deposit or a letter of guarantee.

(2) [(1)] An affiliated [affiliate] REP or POLR shall offer a residential customer or applicant who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (j) of this section, instead of paying a cash deposit. [The letter of guarantee may be conditioned on the agreement of the guarantor to become or remain a customer of the provider affiliate REP or POLR for the term during which the guarantee is in effect. If the guarantor fails to become, or ceases to be, a customer of the affiliate REP or POLR, the provider affiliate REP or POLR may require the customer who was obligated to pay the initial deposit to pay such deposit as a condition of continuing the contract for service.]

(3) [(2)] An affiliated [affiliate] REP or POLR shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be combined with or issued concurrently with the request for deposit. [Instead of an initial deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months. ]

[(3) A competitive retailer that collects deposits from customers shall do so pursuant to subsections (f)-(i), (k), and (m) of this section.]

(d) Additional deposits by existing customers.

(1) An affiliated [affiliate ]REP or POLR may request an additional deposit from an existing customer if:

(A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and

(B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.

(2) A customer shall pay an additional deposit within ten days after the affiliated [affiliate] REP or POLR has [issued a disconnection notice and] requested the additional deposit.

[(3) Instead of an additional deposit, a residential customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.]

(3) [(4)] An affiliated [affiliate ]REP or the POLR may disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued concurrently with [either] the written request for the additional deposit [or current bill. However, the affiliate REP is not required to request an additional deposit as a condition of continuing service unless such a requirement is contained within the REP's terms of service document].

[(e) Deposits for temporary or seasonal service and for weekend residences. A REP may require a deposit sufficient to reasonably protect it against the assumed risk for temporary or seasonal service or weekend residences, as long as the policy is applied in a uniform and nondiscriminatory manner. These deposits shall be returned according to guidelines set out in subsection (k) of this section.]

(e) [(f)] Amount of deposit.

(1) The total of all deposits, initial and additional, required by a REP[, other than the POLR,] from any residential customer or applicant shall not exceed an amount equivalent to one-fifth of the customer's estimated annual billing. A REP may base the estimated annual billing on a reasonable estimate of average usage for the customer class. [the greater of either:]

[(A) the sum of the estimated billings for the next two months; or ]

[(B) one-sixth of the estimated annual billing.]

(2) For the purpose of determining [calculating] the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer or applicant.

[(3) The POLR shall not collect a total deposit that exceeds an amount equivalent to one-sixth of the estimated annual billing.]

(3) [(4)] If a customer or applicant qualifies [is qualified] for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer or applicant shall be eligible to pay any deposit that exceeds $50 in two equal installments [the actual estimated billing for the next month or one-twelfth of the estimated annual billing in two installments]. Notice of this option for customers eligible for the rate reduction program shall be included in any written notice to a customer requesting a deposit. The customer shall have the obligation of providing sufficient information to the REP

to demonstrate that the customer is eligible for the rate reduction program. The first installment shall be due no sooner than ten days, and the second installment no sooner than 40 days, after the issuance of written notification to the applicant of the deposit requirement.

[(A) The first installment shall not exceed the greater of the estimated billing for the next month or one-twelfth of the estimated annual billing and shall be due no earlier than ten days after the issuance of written notification.]

[(B) The second installment for the remainder of the deposit shall be due no earlier than 40 days after the issuance of written notification. The REP or POLR shall issue a written notification regarding the remaining deposit amount due within 20 days, but no less than ten days, prior to the due date for the second deposit installment.]

(f) [(g)] Interest on deposits. A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission in [on] December [1] of the preceding year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made from [retroactive to] the date of deposit.

(1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(g) [(h)] Notification to customers. When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit, how a customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.

(h) [(i)] Records of deposits.

(1) A REP that collects a deposit shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit; and

(C) each transaction concerning the deposit.

(2) A [The] REP that collects a deposit shall[, upon the request of the customer,] issue a receipt of deposit to each customer or applicant paying a deposit or reflect the deposit on the customer's bill statement. A REP [and] shall provide means for a depositor to establish a claim if the receipt is lost.

(3) A [The] REP shall maintain a record of each unclaimed deposit for at least four years.

(4) A [The] REP shall make a reasonable effort to return unclaimed deposits.

(i) [(j)] Guarantees of residential customer accounts. A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to the following [these minimum] requirements:

(1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (f) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The REP may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the REP, have no past due balance, and have no more than one late payment in a 12-month period during the term of the guarantee agreement.

(2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (k) of this section.

(3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.

(4) If the guarantor ceases to be a customer of the REP or has more than one late payment in a 12-month period during the term of the guarantee agreement, the provider may treat the guarantee agreement as in default and demand a [the amount of the] cash deposit from the residential customer as a condition of continuing service.

(5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.

(B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).

(6) The REP may initiate termination of the guarantor's service (or disconnection of service for the POLR, or any REP having disconnect authority) [to the guarantor] for nonpayment of the guaranteed amount only if the termination of service (or, where applicable, the disconnection of service) was disclosed in the written guarantee agreement [terms of service document], and only after proper notice as described by paragraph (5) of this subsection and §25.482 of this title (relating to Termination of Contract) or §25.483 of this title (relating to Disconnection of Service).

(j) [(k)] Refunding deposits and voiding letters of guarantee.

(1) A deposit held by a REP shall be refunded when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having any late payments. [Retention period for deposits and letters of guarantee.]

[(A) A deposit held by a POLR shall be refunded when the customer has paid POLR bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service disconnected for nonpayment of a bill and without having more than two occasions in which a bill was delinquent.]

[(B) A REP, other than the POLR, may keep a deposit for the entire time a customer receives electric service from the REP.]

[(C) Upon termination of a customer's electric service, a REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, at the customer's direction. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be voided and returned to the guarantor. Alternatively, the REP may provide the guarantor with written documentation that the contract has been voided. If the customer does not meet these refund criteria, the deposit and interest or the letter of guarantee may be retained.]

(2) Once the REP is no longer the REP of record for a customer, the REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, as agreed upon by the customer and both REPs. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be voided and returned to the guarantor. Alternatively, the REP may provide the guarantor with written documentation that the contract has been voided.

(3) [~~(2)~~] If a customer's or applicant's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the guarantee agreement [~~contract~~] has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.

(4) [~~(3)~~] A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.

(k) [~~(l)~~] Re-establishment of credit. A [~~Every~~] customer or applicant who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment agreement, if offered, and reestablish credit. [~~Upon request, the REP shall reasonably demonstrate the amount of electric service received, but not paid for, and the reasonableness of any charges for the unpaid service, and any other charges required to be paid as a condition of electric service restoration to such premise.~~]

(l) [~~(m)~~] Upon sale or transfer of company. Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records[~~, provided that the deposits were not returned to the customers and the legal successor accepts transfer of such deposits~~].

*§25.479. Issuance and Format of Bills.*

(a) Application. This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.

(b) Frequency and delivery of bills.

(1) A [~~Until January 1, 2004, a~~] REP shall issue a bill monthly to each customer, unless service is provided for a period of less than one month. A [~~Beginning January 1, 2004, a~~] REP may issue a bill less frequently than monthly if both the customer and the REP agree to such an arrangement.

(2) Bills shall be issued no later than 30 days after the REP receives the usage data and any related invoices for non-bypassable charges [~~as promptly as practicable after reading meters or obtaining the meter usage and other billing determinants from the transmission and distribution utility, the municipally owned utility or the electric cooperative~~].

(3) A REP shall issue bills [~~Bills shall be issued~~] to residential customers in writing and delivered via the United States Postal Service [~~(U.S. mail)~~]. REPs may provide bills to a customer electronically in lieu of written mailings if both the customer and the REP agree to such an arrangement. An affiliated [~~affiliate~~] REP or a provider of last resort shall not require a customer to agree to such an arrangement as a condition of receiving electric service.

(4) A[~~In no event shall a~~] REP shall not charge a customer a fee for issuing a standard bill, which is a bill delivered via U.S. mail that complies with the requirements of this section. The customer may be charged a fee or given a discount for non-standard billing in accordance with the terms of service document [~~receiving a bill~~].

(c) Bill content.

(1) Each customer's bill shall include the following information:

(A) The certified name and address of the REP and the number of the license issued to the REP by the commission;

(B) A toll-free telephone number, in bold-face type, that the customer can call during specified hours for inquiries and to make complaints to the REP about the bill;

(C) A toll-free telephone number that the customer may call 24 hours a day, seven days a week, to report power outages and concerns about the safety of the electric power system;

(D) The service address, electric service identifier (ESI), and account number of the customer;

(E) The service period for which the bill is rendered;

(F) The date on which the bill was issued;

(G) The payment due date of the bill and, if different, the date by which payment from the customer must be received by the REP to avoid a late charge or other collection action;

(H) The current charges for electric service as disclosed in the customer's terms of service document, exclusive of applicable taxes, and a separate calculation of the average unit price of the current charge for electric service for the current billing period, labeled, "The average price you paid for electric service this month." This calculation shall reflect all fixed and variable recurring charges, but not include any nonrecurring charges or credits, which is expressed as a cents per kilowatt-hour rounded to the nearest one-tenth of one cent. If the customer is on a level or average payment plan, the level or average payment should be clearly shown in addition to the usage-based rate;

(I) The identification and itemization of [~~recurring~~] charges other than for electric service as disclosed in the customer's terms of service document;

(J) The itemization and amount included in the amount due for any [~~other~~] non-recurring charge, including late fees, returned check fees, restoration of service fees, or other fees disclosed in the REP's terms of service document provided to the customer;

(K) The total current charges, balances from the preceding bill, payments made by the customer since the preceding bill, the total amount due and a notice that the [~~checkbox for the~~] customer has the opportunity to voluntarily donate money to the bill payment assistance program, pursuant to §25.480(g)(2) of this title (relating to Bill Payment and Adjustments);

(L) The current beginning and ending meter readings of non-interval demand recorder meters, if the bill is based on actual kilowatt-hour (kWh) usage, including kWh, actual kilowatts (kW) or kilovolt ampere (kVa), and billed kW or kVa, [;] the kind and number of units measured, whether the bill was issued based on estimated usage, and any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill, unless the customer is provided conversion charts;

(M) Any amount owed under a written guarantee agreement, [contract] provided the guarantor was previously notified in writing by the REP of an obligation on a guarantee or as required by §25.478 of this title (relating to Credit Requirements and Deposits);

(N) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;

(O) Notification of any changes in the customer's prices [rates] or charges due to the operation of a variable rate feature previously disclosed by the REP in the customer's terms of service document; and

(P) The notice required by §25.481(d) of this title (relating to Unauthorized Charges).[; and]

(2) [(Q)] If the REP has presented its electric service charges in an unbundled fashion, it shall use the following terms as defined by the commission: "transmission and distribution service,"[;] "generation service,"[;] "System Benefit Fund,"[;] and, where applicable, "transition charge," [and] "nuclear decommissioning fee," and "municipal franchise fee."

(3) [(2)] If the REP bundles its electric service charges, the REP shall provide an itemization to the customer upon the customer's request.

(4) [(3)] A [In no event may a] customer's electric bill shall not contain charges for electric service from a service provider other than the customer's designated REP.

(d) Public service notices. A REP shall, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP shall provide these public service notices to its customers on its billing statements, as a separate document issued with its bill, [an insert in its billing statement, or] by electronic communication, or by other acceptable mass communication methods, as approved by the commission [as required by the commission].

(e) Estimated bills. If a REP is unable to issue a bill based on actual meter reading due to the failure of the transmission and distribution utility (TDU), the registration agent, municipally owned utility or electric cooperative to obtain or transmit a meter reading or an invoice for non-bypassable charges to the REP on a timely basis, the REP may issue a bill based on the customer's [an] estimated usage [reading] and inform the customer of the reason for the issuance of the estimated bill.

(f) Non-recurring charges. A REP may pass through to its customers all applicable non-recurring charges billed to the REP by a TDU, municipally owned utility, or electric cooperative as a result of establishing, switching, disconnecting, reconnecting, or maintaining service to an applicant or customer. In the event of a meter test, the TDU, municipally owned utility, electric cooperative, and REP shall comply with the requirements of §25.124 of this title (relating to Meter Testing) or with the requirements of the tariffs of a TDU, municipally owned utility, or electric cooperative, as applicable. The TDU, municipally owned utility, or electric cooperative shall maintain a record of all meter tests performed at the request of a REP or a REP's customers.

(g) [(f)] Record retention. A REP shall maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given period. A copy of a customer's billing records may be obtained by that customer on request, and may be obtained once per 12-month period [year], at no charge.

(h) [(g)] Transfer of delinquent balances or credits. If the customer has an outstanding balance or credit owed to the customer's current REP that is due from a previous account in the same customer class, then the customer's current REP may transfer that balance to the customer's current account. The delinquent balance and specific account or address shall be identified as such on the bill. There shall be no balance transfers between REPs, other than transfer of a deposit, as specified in §25.478(j)(2) [(k)(1)(C)] of this title.

*§25.480. Bill Payment and Adjustments.*

(a) Application. This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. In addition, this section applies to a transmission and distribution utility (TDU) where specifically stated. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.

(b) Bill due date. A REP shall state a payment due date on the bill which shall not be less than 16 days after issuance. A bill is considered to be issued on the [The] issuance date stated [is the issuance date] on the bill or[, if there is no issuance date on the bill,] the postmark date on the envelope, whichever is later. A payment for electric service is delinquent if not received by the REP or at the REP's authorized payment agency by the close of business on the due date. If the 16th [sixteenth] day falls on a holiday or weekend, then the due date shall be the next business day after the 16th [sixteenth] day.

(c) Penalty on delinquent bills for electric service.

(1) A REP may charge a [A] one-time penalty not to exceed 5.0% [may be charged] on a delinquent bill for electric service. No such penalty shall apply to residential or small commercial customers served by the provider of last resort (POLR), or to customers receiving a low-income discount pursuant to the Public Utility Regulatory Act (PURA) §39.903(h). The one-time penalty, not to exceed 5.0%, [5.0% penalty on delinquent bills] may not be applied to any balance to which the penalty has already been applied.

(2) A bill issued to a state agency, as defined in the Government Code, Chapter 2251, shall be due [and bear interest if overdue] as provided in Chapter 2251, no earlier than the 31st day after the agency receives an invoice.

(d) Overbilling. If charges are found to be higher than authorized in the REP's terms and conditions for service or other applicable commission rules, then the customer's bill shall be corrected.

(1) The correction shall be made for the entire period of the overbilling.

(2) If the REP corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.

(3) If the REP does not correct the overcharge within three billing cycles of the error, it shall pay interest on the amount of the overcharge at the rate set by the commission.

(A) Interest on overcharges that are not adjusted by the REP within three billing cycles of the bill in error shall accrue from the date of payment or from the issuance date of the erroneous bill.

(B) All interest shall be compounded monthly at [~~based on~~] the approved annual rate set by the commission.

(C) Interest shall not apply to leveling plans or estimated billings.

(4) If the REP rebills for a prior billing cycle, the adjustments shall be identified by account and billing date or service period.

(5) A bill issued to a state agency shall bear interest if overdue as provided in Texas Government Code Chapter 2251.

(e) Underbilling by a REP or TDU. If charges are found to be lower than authorized by the REP's terms and conditions of service, or if the REP fails to bill the customer for service, then the customer's bill may be corrected.

(1) Notwithstanding the TDU tariff for retail delivery service, neither the REP nor the customer shall be responsible for corrected charges billed by the TDU unless such charges are billed by the TDU within 90 days from the date of the issuance of the bill in which the underbilling occurred, or if no bill was issued, within 100 days of the end of the billing cycle. However, the TDU may bill for charges beyond this timeframe if the underbilling is the result of adjustments due to meter errors as provided in §25.125 of this title (relating to Adjustments Due to Meter Errors) or is the result of theft of service by the customer, as defined in §25.126 of this title (relating to Meter Tampering), §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities), and §25.311 of this title (relating to Competitive Metering Services). [~~The REP may backbill the customer for the amount that was underbilled. The backbilling shall not include charges that extend more than six months from the date the error was discovered unless the underbilling is a result of theft of service by the customer.~~]

(2) The customer shall not be responsible for corrected charges billed by the REP unless such charges are billed by the REP within 180 days from the date of issuance of the bill in which the underbilling occurred, or if no bill was issued, within 190 days of the end of the billing cycle. The REP may backbill a customer for the amount that was underbilled beyond the timelines provided in this paragraph if the underbilling is found to be the result of theft of service by the customer.

(3) [~~(2)~~] The REP may terminate service, or the POLR or a REP with disconnect authority pursuant to §25.483(b) of this title (relating to Disconnection of Service), may disconnect service, if the customer fails to pay the additional charges within a reasonable time.

(4) [~~(3)~~] If the underbilling is $50 or more, the REP shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.

(5) [~~(4)~~] The REP shall not charge interest on underbilled amounts unless such amounts are found to be the result of theft of service (meter tampering, bypass, or diversion) by the customer[~~, as defined in §25.126 of this title (relating to Meter Tampering)~~]. Interest on underbilled amounts shall be compounded monthly at the annual rate, as set by the commission. Interest shall accrue from the day the customer is found to have first stolen the service.

(6) If the REP adjusts the bills for a prior billing cycle, the adjustments shall be identified by account and billing date or service period.

(f) Disputed bills. If there is a dispute between a customer and a REP [~~provider~~] about the REP's bill for any service billed on the retail electric bill, the REP shall promptly investigate and report the results to the customer. The REP [~~provider~~] shall inform the customer of the complaint procedures of the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling).

(g) Alternate payment programs or payment assistance.

(1) Notice required. When a customer contacts a REP and indicates inability to pay a bill or a need for assistance with the bill payment, the REP shall inform the customer of all applicable [~~alternative~~] payment options and payment assistance programs that are offered by or available from the REP, such as bill payment assistance, deferred payment plans, disconnection moratoriums for the ill, or low-income energy assistance programs, and of the eligibility requirements and procedure for applying for each.

(2) Bill payment assistance programs.

(A) All REPs [~~Each REP~~] shall implement a bill payment assistance program for residential electric customers. At a minimum, such a program shall solicit voluntary donations from customers through the retail electric bills [~~by a check-off box on the retail electric bill~~].

(B) Each REP shall provide an annual report on June 1 of each year to the commission summarizing:

*(i)* the total amount of customer donations;

*(ii)* the amount of money set aside for bill payment assistance;

*(iii)* the assistance agency or agencies selected to disburse funds to residential customers; and

*(iv)* the amount of money disbursed by the REP or provided to each assistance agency to disburse funds to residential customers.

(C) A REP shall obtain a commitment from an [~~An~~] assistance agency selected [~~by a REP~~] to disburse bill payment assistance funds that the agency will [~~shall~~] not discriminate in the distribution of such funds to customers based on the customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for the low-income discount program or energy efficiency services.

(h) Level and average payment plans. A REP shall offer a level or average payment plan to its customers who are not currently delinquent in payment to the REP. Consistent with the REP's terms of service, the REP may bill or credit any overbilling or underbilling, as appropriate, at least once every twelve months. [~~A REP shall not limit participation to only credit-worthy customers.~~] A REP may collect under-recovered costs from a customer annually, or upon termination of service to the customer. A REP shall refund any over-recovered amounts to customers annually, or upon termination of service to the customer. A [~~Additionally, a~~] REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a plan. All details concerning a levelized or average payment program shall be disclosed in the customer's terms of service document.

(i) Payment arrangements. A payment arrangement is any agreement between the REP and a customer that allows a customer to pay the outstanding bill after its due date, but before the due date of the next bill. If the REP issues [~~issued~~] a termination or disconnection notice [~~(or in the case of the POLR, a disconnection notice)~~] before

a [the] payment arrangement was made, that termination or disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be terminated [(]or disconnected [in the case of the POLR)] after the later of the due date for the payment arrangement or the termination or disconnection date indicated in the notice, without issuing an additional disconnection notice. [A REP may switch terminated customers to the POLR by notifying the registration agent.]

(j) Deferred payment plans. A deferred payment plan is an agreement [arrangement] between the REP and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the current [next] bill. A deferred payment plan may be established in person or by telephone, but all deferred payment plans shall be confirmed in writing by the REP.

(1) A REP may offer a deferred payment plan to any residential customer who has expressed an inability to pay his or her bill.

(2) A REP shall offer a deferred payment plan to a customer who has been underbilled, as described in subsection (e) of this section, or to customers who qualify for such plans pursuant to [§25.482(g) of this title (relating to Termination of Contract) or]§25.483(j) of this title [(relating to Disconnection of Service)].

(3) For customers who have expressed an inability to pay, an affiliated [An affiliate] REP or POLR shall offer a deferred payment plan unless [such plans unless] the customer:

(A) has been issued more than two termination or disconnection notices during the preceding 12 months; or

(B) has received service from the affiliated [affiliate] REP or POLR for less than three months, and the customer lacks:

*(i)* sufficient credit; or

*(ii)* a satisfactory history of payment for electric service from a previous REP (or its predecessor electric utility).

(4) Any deferred payment plans offered by a REP shall not refuse a customer participation in such a program on any basis set forth in §25.471(c) of this title (relating to General Provisions of Customer Protection Rules) [be implemented in a non-discriminatory manner, according to the provisions of this subsection].

(5) Every deferred payment plan offered by a REP shall provide that the delinquent amount be paid in equal installments over at least three billing cycles, unless the customer requests a lesser number of installments. A REP may require an initial payment not to exceed 10% of the delinquent amount of the outstanding balance to initiate the agreement, with the remainder to be paid in equal installments over at least the next three billing cycles.

(6) A copy of the deferred payment plan shall be provided to the customer and:

(A) shall include a statement, in a clear and conspicuous type [no smaller than 14 point size], that states "If you are not satisfied with this agreement, or if the agreement was made by telephone and you feel this does not reflect your understanding of that agreement, contact (insert name of REP) [your retail electric provider]." In addition, where the customer and the REP's representative or agent meet in person, the representative shall read the preceding statement to the customer[. The REP shall provide information to the customer in English or Spanish as necessary to make the preceding required statement understandable to the customer];

(B) may include a [5.0%] penalty not to exceed 5.0% for late payment but shall not include a finance charge;

(C) shall state the length of time covered by the plan;

(D) shall state the total amount to be paid under the plan;

(E) shall state the specific amount of each installment;

(F) shall allow for the termination or disconnection of service (as appropriate) if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection or termination of service; and

[(G) shall not refuse a customer participation in such a program on any basis set forth in §25.471(c) of this title (relating to General Provisions of Customer Protection Rules); and]

(G) [(H)] shall allow either the customer or the REP to initiate a renegotiation of the deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan.

(7) A REP may pursue termination or disconnection of service if [of service (or disconnection of service in the case of the POLR or a REP with disconnect authority pursuant to §25.483(b) of this title (relating to Disconnection of Service)) when] a customer does not meet the terms of a deferred payment plan. However, service shall not be terminated or disconnected until appropriate notice has been issued, pursuant to §25.483 of this title or §25.482 of this title (relating to Termination of Service), notifying [as applicable, to] the customer [indicating] that the customer has not met the terms of the plan. [The REP may renegotiate the deferred payment plan agreement prior to disconnection. If the customer does not fulfill the terms of the plan, and the customer was previously provided a disconnection notice or termination notice for the outstanding amount, no additional disconnection or termination notice shall be required.]

(k) Allocation of partial payments. A REP shall allocate a partial payment by the customer first to the oldest balance due for electric service, followed by the current amount due for electric service. When there is no longer a balance for electric service, payment may be applied to [other] non-electric services billed by the REP. Electric service shall not [A contract for electric service cannot] be terminated or disconnected for non-payment of non-electric services.

*§25.481. Unauthorized Charges.*

(a) Authorization of charges. Any [After a customer has enrolled or switched to a retail electric provider (REP), pursuant to §25.474 of this title (relating to Selection or Change of Retail Electric Provider), any subsequent] services offered by the REP that will be billed on the customer's electric bill shall be authorized by the customer consistent with this section. [A REP may obtain authorization for an additional product or service to appear on the bill for existing customers by using any of the methods set forth in §25.474 of this title.]

(b) Requirements for billing charges. A REP shall meet all of the following requirements before including any charges on the customer's electric bill:

(1) [Inform the customer.] The REP shall inform [has thoroughly informed] the customer of the product or service being offered, including all associated charges, and explicitly inform [has explicitly informed] the customer that the associated charges for the product or service will appear on the customer's electric bill.

(2) [Obtain customer consent.] The customer must [has] clearly and explicitly consent [consented] to obtaining the product or service offered and to having [have] the associated charges appear on the customer's electric bill. The REP shall record the authorization [consent shall be authorized and verified by the REP] in accordance

with §25.474[(f)] of this title (relating to Selection of Retail Electric Provider. A record of the authorization [consent, including verification,] shall be maintained by the REP for at least 24 months[, beginning immediately after the consent and verification are obtained].

(3) [Provide contact information.] The REP shall provide [has provided] the customer with a toll-free telephone number the customer may call and an address to which the customer may write to resolve any billing dispute and to answer questions.

(c) Responsibilities for unauthorized charges.

(1) If a REP charges a customer's electric bill [is charged] for any product or service without proper customer authorization, the REP [consent and verification of authorization in compliance with this section, the REP that billed the customer, when it learns or is notified that any charge that has not been authorized,] shall promptly, but not later than 45 days thereafter:

(A) discontinue providing the product or service to the customer and cease charging the customer for the unauthorized product or service;

(B) remove the unauthorized charge from the customer's bill;

(C) refund or credit to the customer the [all] money that has been paid by the customer for any unauthorized charge, and if any unauthorized charge that has been paid is not refunded or credited within three billing cycles, pay interest at an annual rate established by the commission pursuant to §25.478(f) [(g)] of this title (relating to Credit Requirements and Deposits) on the amount of any unauthorized charge until it is refunded or credited; and

(D) upon [on] the customer's request, provide the customer, free of charge, with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal of the charge from the customer's electric bill.

(2) A REP shall not:

(A) seek to terminate or disconnect electric service to any customer for nonpayment of an unauthorized charge;

(B) file an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized unless the dispute regarding the unauthorized charges is ultimately resolved against the customer. The customer remains [shall remain] obligated to pay any charges that are not in dispute[, and this paragraph does not apply to those undisputed charges]; or

(C) re-bill the customer for any unauthorized charge.

(3) A REP[, other than a municipally owned utility or an electric cooperative,] shall maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's electric bill and has notified the REP of the unauthorized charge. The record shall contain for each unauthorized charge:

(A) the date the [each] customer requested that the REP remove the unauthorized charge from the customer's electric bill;

(B) the date the unauthorized charge was removed from the customer's electric bill; and

(C) the date the customer was refunded or credited any money that the customer paid for the unauthorized charges.

(d) Notice to customers. Any bill sent to a customer from a REP shall include a statement, prominently located on the bill, that if the customer believes the bill includes unauthorized charges, the customer should [may] contact the REP to dispute such charges and, if not satisfied with the REP's review may file a complaint with the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

(e) Compliance and enforcement.

(1) [Records of customer authorizations.] A REP shall provide proof of the customer's authorization and verification to the customer and/or the commission upon request.

(2) [Records of unauthorized charges.] A REP shall provide a copy of records maintained under the requirements of subsection (c)(3) of this section to the commission and the Office of Public Utility Counsel upon request.

*§25.482. Termination of Service [Contract].*

(a) Applicability. This section applies to retail electric providers (REPs) that do not have disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service). In addition, this section shall apply to a transmission and distribution utility (TDU) where specifically stated. This section applies only with respect to customers who are subject to termination, but not disconnection, by their REP [retail electric provider (REP)'] pursuant to §25.483 of this title [(relating to Disconnection of Service)].

(b) Termination policy. A REP choosing to terminate its contract with a customer shall comply with the minimum standards in this section, or may have provisions in its terms of service that are more favorable to the customer in terms of the cause for termination, the timing of the termination notice, and the period between notice and termination. Nothing in this section shall be interpreted to require a REP to terminate its contract with a customer.

(1) Termination for non-payment. A REP [other than a REP] that is notauthorized to disconnect for nonpayment pursuant to the provisions of §25.483(b) of this title may terminate its contract with a customer for nonpayment of electric service charges and transfer the customer to the affiliated REP. Any REP that is authorized to disconnect a customer for non-payment under the provisions of §25.483(b) of this title may not terminate a customer for nonpayment[, if no other REP extends service to that customer, service shall be offered by the POLR until September 24, 2002, and thereafter by the affiliated REP].

(A) Prior to terminating service to a customer for nonpayment, a REP shall issue notice of termination to the customer in accordance with subsection (f) of this section.

(B) If a customer makes payment or satisfactory payment arrangements prior to the final due date, specified in the termination notice to the customer, the [termination date, a] REP shall continue serving the customer under the existing terms and conditions that were in effect prior to the issuance of a termination notice. Payment of the delinquent bill at the REP's authorized payment agency, if any, is considered payment to the REP. [If a REP chooses to terminate its contract with a customer, it shall follow the procedures in this section, or modify them in ways that are more generous to the customer in terms of the cause for termination, the timing of the termination notice, and the period between notice and termination. Nothing in this section shall be interpreted to require a REP to terminate its contract with a customer.]

(C) If a customer does not make a payment or satisfactory payment arrangements until after the final due date specified in the termination notice, the REP is not required to continue to serve the customer under the prior terms of service.

(2) Termination for reasons other than non-payment. If a REP terminates service with a customer for reasons other than nonpayment (i.e., contract expiration), the REP shall transfer the customer to the provider of last resort (POLR), unless otherwise authorized by the commission.

(c) Termination prohibited. A REP may not terminate its contract with a customer for any of the following reasons:

(1) delinquency in payment for electric service by a previous occupant of the premises if the occupant is not of the same household;

(2) failure to pay for any charge that is not related to electric service;

(3) failure to pay for a different type or class of electric [~~utility~~] service unless charges for such service were included on that account's bill at the time service was initiated;

(4) failure to pay charges arising from an underbilling, except for charges related to theft of service, in accordance with §25.480(e) of this title (relating to Bill Payment and Adjustments) [~~more than six months prior to the current billing~~];

(5) failure to pay disputed charges until a determination as to the accuracy of the charges has been made by the REP [~~or the commission, and the customer has been notified of this determination~~];

(6) failure to pay disputed charges while an informal complaint filed under §25.485 of this title (relating to Customer Access and Complaint Handling) is pending or a complaint that has been formally docketed in accordance with §22.242 of this title (relating to Complaints) is pending;

(7) [~~(6)~~] failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or

(8) [~~(7)~~] failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the bill is based on an estimated meter read by the TDU [~~the transmission and distribution utility is unable to read the meter due to circumstances beyond its control~~].

[~~(d) Termination on holidays or weekends. Unless requested by the customer, a REP shall not terminate a contract for electric service on holidays or weekends.~~]

(d) [~~(e)~~] Termination due to abandonment by the REP. A REP shall not abandon a customer or a service area without advance written notice to its customers and the commission and approval from the commission. In the event a REP [~~provider~~] terminates a customer's service [~~contract~~] due to abandonment, that REP [~~provider~~] shall not collect or attempt to collect penalties from that customer.

(e) [~~(f)~~] Termination of energy assistance clients.

(1) A REP shall not terminate [~~a contract for~~] service to a delinquent residential customer for a billing period in which the provider receives a pledge, letter of intent, purchase order, or other notification that an energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the termination notice, and the customer, by the due date in the termination notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider.

(2) If an energy assistance provider has requested historical usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer and Premise Information), the REP shall extend the final due date on the termination notice, day for day, from the date the usage data was requested until it is provided.

(3) A REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the termination request.

(4) A REP may terminate service to a customer if the energy assistance agency's payment is not received by the date agreed upon by the REP and the energy assistance provider or if the customer fails to pay any portion of the bill not covered by the pledge.

[~~(g) Extreme weather. A REP shall not seek to terminate a residential customer's contract for electric service due to non-payment during an extreme weather emergency. A REP shall offer residential customers a deferred payment plan that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term "extreme weather emergency" means the weather conditions described in §25.483 of this title (relating to Disconnection of Service).~~]

(f) [~~(h)~~] Termination notices. [~~Except as provided in §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers) a REP may issue a notice of termination of contract.~~] Any termination notice issued by a REP shall:

(1) not be issued before the first day after the bill is due[~~, to enable the REP to determine whether the payment was received by the due date. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP~~];

(2) be a separate mailing or hand delivered document with a stated date of termination with the words "termination notice" or similar language prominently displayed. The termination notice may be sent concurrently with a request for deposit, and a [~~A~~] REP may send an additional notice by email or facsimile.

(3) have a final due date in the termination notice [~~date~~] that is not a holiday, [ ~~or~~] weekend day, or any other day that the REP's personnel is not available to take payments, and that is not less than ten days after the notice is issued.

(g) [~~(i)~~] Contents of termination notice. Any termination notice shall include the following information:

(1) The reasons for the termination of service [~~the contract~~];

(2) The actions, if any, that the customer may take to avoid the termination of service [~~the contract~~];

(3) If the customer is in default, the amount of all fees or charges which will be assessed, if any, against the customer as a result of the default under the contract, [~~if any,~~] as set forth in the REP's terms of service document provided to the customer;

(4) The amount overdue, if applicable;

(5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of termination or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at www.puc.state.tx.us/ocp/complaints/complain.cfm."

(6) A statement that informs the customer of the right to obtain services from another licensed REP, including the affiliated REP or a POLR, and that information about other REPs, the affiliated REP, or the POLR can be obtained from the commission and the POLR. Customers that do not exercise their right to choose another REP shall have their electric service transferred to the POLR or the affiliated REP, if termination is for non-payment, in accordance with the applicable rules or protocols, and may be required to pay a deposit, or prepay, to receive ongoing electric service. The REP shall not state or imply that nonpayment by the customer will result in physical disconnection of electricity or affect the customer's ability to obtain electric service from another REP, the affiliated REP, or the POLR.

(7) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation and with the consent of both REPs.

(8) The availability of deferred payment or other billing arrangements, if any, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs.

(9) A description of the activities that the REP will use to collect payment, including the use of debt collection agencies, small claims court and other legal remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.

(h) [~~(j)~~] Notification of the registration agent. After the expiration of the notice period in subsection (f) [~~(h)~~] of this section, a REP shall notify the registration agent of a transfer [~~switch~~] request in a manner established by the registration agent so that the customer will receive service from the affiliated REP or the POLR [~~pursuant to §25.43(b)(2) and (3) of this title (relating to the Provider of Last Resort (POLR) or the POLR pursuant to §25.43(b)(1) and (4) and (d) of this title, unless the customer selects another REP or the POLR prior to the effective date of the switch~~].

(i) [~~(k)~~] Customer's right to terminate service [~~a contract~~] without penalty. A [~~As disclosed in the customer's terms of service document, a~~] customer may terminate service [~~a contract~~] without penalty in the event:

(1) The customer moves to another premises;

(2) Market conditions change and the terms of service document [~~contract~~] allows the REP to terminate service [~~the contract~~] without penalty in response to changing market conditions; or

(3) A REP notifies the customer of a material change in the terms and conditions of the [~~their~~] service agreement.

*§25.483. Disconnection of Service.*

(a) Disconnection and reconnection policy. Only a transmission and distribution utility (TDU), municipally owned utility, or electric cooperative shall perform physical disconnections and reconnections. Unless otherwise stated, it is the responsibility of a retail electric provider (REP) to request such action from the appropriate TDU [~~transmission and distribution utility~~], municipally owned utility, or electric cooperative in accordance with that entity's relevant tariffs, in accordance with the protocols established by the registration agent, [~~requirements of the Electric Reliability Council of Texas,~~] and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it shall comply with the requirements [~~follow the procedures~~] in this section [~~or procedures that are more generous to the customer in terms of the cause for disconnection, the timing of the disconnection notice, and the period between notice and disconnection~~]. Nothing in this section requires a REP to request that a customer's service be disconnected [~~shall be interpreted to require a REP to disconnect a customer~~].

(b) Disconnection authority.

(1) Any [~~The provider of last resort (POLR) and, beginning September 24, 2002, any~~] REP may authorize the disconnection of a large non-residential customer, as that term is defined in §25.43 of this title (relating to Provider of Last Resort (POLR)), unless the [~~that~~] customer is receiving service under a contract entered into prior to September 24, 2002, the original term of which has not expired [~~at the time transfer to POLR is requested,~~] and [~~if~~] the contract makes no provision for waiver of the customer's right to be transferred to the POLR for non-payment.

(2) Until June 1, 2004 [~~October 1, 2004~~], and except as provided in subsection (d) of this section, only the affiliated REP or the POLR may authorize disconnection of residential and small non-residential customers, as those terms are defined in §25.43 of this title. No later than April 1, 2004 [~~June 1, 2004~~], commission staff shall file a report with the commission assessing the potential impact on the public interest of authorizing all REPs to disconnect residential and small non-residential customers. On or before June 1, 2004 [~~October 1, 2004~~], the commission shall make a determination as to whether authorizing all REPs to disconnect would be contrary to the public interest, taking into consideration such factors as the impact on the retail market as a whole and the likelihood of unauthorized disconnections. If the commission determines that authorizing all REPs to disconnect is not contrary to the public interest, REPs shall have such authority as of June 1, 2004 [~~October 1, 2004~~], or another date determined by the commission, and after that date residential and small non-residential customers shall not be transferred to their affiliated REP for non-payment.

(c) Disconnection with notice. A REP having disconnection authority under the provisions of subsection (b) of this section, including the POLR, may authorize the disconnection of a customer's electric service after proper notice and not before the first day after the disconnection date in the notice for any of the following reasons:

(1) failure to pay any outstanding bona fide debt for electric service [~~a bill~~] owed to the REP or to make deferred payment arrangements by the date of disconnection stated on the disconnection notice. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP;

(2) failure to comply with the terms of a deferred payment agreement made with the REP;

(3) violation of the REP's' terms and conditions on using service in a manner that interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(4) failure to pay a deposit as required by §25.478 of this title (relating to Credit Requirements and Deposits); or

(5) failure of the guarantor to pay the amount guaranteed, when the REP has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service.

(d) Disconnection without prior notice. Any [~~Notwithstanding any contrary provision of subsection (b) of this section, any~~] REP or TDU may, at any time, authorize disconnection of a customer's electric service without prior notice for any of the following reasons:

(1) Where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the REP, or its agent, shall post a notice of disconnection and the reason for the disconnection at the place of common

entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) Where service is connected without authority by a person who has not made application for service;

(3) Where service is reconnected without authority after disconnection for nonpayment;

(4) Where there has been tampering with the equipment of the transmission and distribution utility, municipally owned utility, or electric cooperative; or

(5) Where there is evidence of theft of service.

(e) Disconnection prohibited. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of a customer's electric service for any of the following reasons:

(1) Delinquency in payment for electric service by a previous occupant of the premises;

(2) Failure to pay for any charge that is not for electric service regulated by the commission, including competitive energy service, merchandise, or optional services;

(3) Failure to pay for a different type or class of electric service unless charges for such service were included on that account's bill at the time service was initiated;

(4) Failure to pay charges resulting from an underbilling, except theft of service, more than six months prior to the current billing;

(5) Failure to pay disputed charges, except for the amount under dispute, until a determination as to the accuracy of the charges has been made by the REP or the commission, and the customer has been notified of this determination;

(6) Failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or

(7) Failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the bill is based on an estimated meter read by the TDU [~~REP is unable to obtain the meter reading due to circumstances beyond its control~~].

(f) Disconnection on holidays or weekends

(1) A [~~Unless a dangerous condition exists or the customer requests disconnection, a~~] REP having disconnection authority under the provisions of subsection (b) of this section shall not request disconnection of a customer's electric service for nonpayment on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the REP's personnel are available on those days to take payments, make payment arrangements with the customer, and request reconnection of service [~~and personnel of the transmission and distribution utility, municipally owned utility, or electric cooperative are available to reconnect service~~].

(2) Unless a dangerous condition exists or the customer requests disconnection, a TDU shall not disconnect a customer's electric service on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the personnel of the TDU are available to reconnect service on all of those days.

(g) Disconnection due to abandonment by the POLR. A POLR shall not abandon a customer or a service area without written notice to its customers and approval from the commission, in accordance with §25.43 of this title [~~(relating to Provider of Last Resort (POLR))~~].

(h) Disconnection of ill and disabled. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.

(1) Each time a customer seeks to avoid disconnection of service under this subsection, the customer shall accomplish all of the following by the stated date of disconnection:

(A) Have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the REP by the stated date of disconnection;

(B) Have the person's attending physician submit a written statement to the REP; and

(C) Enter into a deferred payment plan.

(2) The prohibition against service disconnection provided by this subsection shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer or physician.

(3) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for delay of disconnection pursuant to this subsection, and the TDU reasonably believes that the information may be unknown to the REP, the TDU shall delay the disconnection and promptly communicate the information to the REP. The TDU shall disconnect such customer if it subsequently receives a confirmation of the disconnect notice from the REP. Nothing herein should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection, or to provide prior notice of the disconnection, when not otherwise required.

(i) Disconnection of energy assistance clients.

(1) A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider.

(2) If an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer and Premise Information), the REP shall extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided.

(3) A REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the transmission and distribution utility.

(4) A REP may request disconnection of service to a customer if payment from the energy assistance provider's pledge is not received within the timeframe agreed to by the REP and the energy assistance provider, or if the customer fails to pay any portion of the outstanding balance not covered by the pledge.

(j) Disconnection during extreme weather. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnect for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP shall offer residential customers a deferred payment plan that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency.

(1) The term "extreme weather emergency" shall mean a day when:

(A) [~~(1)~~] the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or

(B) [~~(2)~~] the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.

(2) A TDU shall notify the commission of an extreme weather emergency in a method prescribed by the commission, on each day that the TDU has determined that an extreme weather emergency has been issued for a county in its service area. The initial notice shall include the county in which the extreme weather emergency occurred and the name and telephone number of the utility contact person.

(k) Disconnection of master-metered apartments. When a bill for electric service is delinquent for a master-metered apartment complex:

(1) The REP having disconnection authority under the provisions of subsection (b) of this section shall send a notice to the customer as required by subsection (l) of this section. At the time such notice is issued, the REP, or its agents, shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the REP shall post a minimum of five notices in English and Spanish in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be in large type and shall read: "Notice to residents of (name and address of apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

(l) Disconnection notices. A disconnection notice for nonpayment shall:

(1) not be issued before the first day after the bill is due[~~, to enable the REP to determine whether the payment was received by the due date. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP~~];

(2) be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. The REP may send the disconnection notice concurrently with the request for a deposit;

(3) have a disconnection date that is not a holiday, [ ~~or~~] weekend day, or day that the REP's personnel are not available to take payments, and is not less than ten days after the notice is issued;

(4) include a statement notifying the customer that if the customer needs assistance paying the bill by the due date, or is ill and unable to pay the bill, the customer may be able to make some alternate payment arrangement, establish a deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.

(m) Contents of disconnection notice. Any disconnection notice shall include the following information:

(1) The reason for disconnection;

(2) The actions, if any, that the customer may take to avoid disconnection of service;

(3) The amount of all fees or charges which will be assessed against the customer as a result of the default;

(4) The amount overdue;

(5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of disconnection or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at www.puc.state.tx.us/ocp/complaints/complain.cfm;"

(6) A statement that informs the customer of the right to obtain services from another licensed REP, and that information about other REPs can be obtained from the commission;

(7) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation and with the consent of both REPs;

(8) The availability of deferred payment or other billing arrangements, if any, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs; and

(9) A description of the activities that the REP will use to collect payment, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other [~~legal~~] remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.

(n) Reconnection of service. Upon a customer's satisfactory correction of reasons for disconnection, the REP shall request the TDU [~~shall notify the transmission and distribution utility~~], municipally owned utility, or electric cooperative to reconnect the customer's electric service as quickly as possible, in accordance with standards established by the registration agent. The REP shall inform the customer of the approximate reconnection time in accordance with this subsection. If a REP submits a reconnection order with no priority or same day reconnect request and the TDU completes the reconnect the same day, the TDU shall not assess a priority reconnect fee. A TDU may assess a priority reconnect fee only when the customer expressly requests it. A customer's service shall be reconnected no later than the timelines set forth in paragraphs (1)-(3) of this subsection: [~~, within one day, to reconnect the customer's electric service and shall reinstate the service.~~]

(1) Satisfactory payments made by a customer between 8:00 a.m. and 7:00 p.m. on a federal business day shall result in reconnection of that customer's electric service no later than the end of the TDU's next field operational day.

(2) Satisfactory payments made by a customer after 7:00 p.m., but before 8:00 a.m. on a federal business day shall result in

reconnection of that customer's electric service no later than the end of the TDU's next field operational day.

(3) Satisfactory payments made by a customer on a day other than a federal business day shall be considered received on the next federal business day and shall result in reconnection of that customer's electric service no later than the end of the TDU's next field operational day.

*§25.485. Customer Access and Complaint Handling.*

(a) The purpose of this section is to ensure that retail electric customers have the opportunity for impartial and prompt resolution of disputes with REPs or aggregators.

(b) [~~(a)~~] Customer access.

(1) Each retail electric provider (REP) or aggregator shall ensure that customers have reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer's [~~customers~~] bills, terminate competitive service, and transact any other pertinent business.

(2) Telephone access shall be toll-free and shall afford customers a prompt answer during normal business hours.

(3) Each REP shall provide a 24-hour automated telephone message instructing the caller how to report any service interruptions or electrical emergencies.

(4) Each REP and aggregator shall employ 24-hour capability for accepting a customer's rescission of the terms of service [~~customer contract cancellation~~] by telephone, pursuant to rights of cancellation in §25.474(j) [~~(h)~~] of this title (relating to Selection [~~or Change~~] of Retail Electric Provider).

(c) [~~(b)~~] Complaint handling. A [~~No REP or aggregator shall limit a~~] residential or small commercial customer has the [~~customer's~~] right to make a formal or informal complaint to the commission, and a terms of service agreement cannot impair this right. [~~A REP or aggregator shall not require a residential or small commercial customer to make a formal or informal complaint to the commission.~~] A REP or aggregator shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties.

(d) [~~(c)~~] Complaints to REPs or aggregators. A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to a [~~with the~~] REP or aggregator. The REP or aggregator shall promptly investigate and advise the complainant of the results within 21 days. A customer who is dissatisfied with the REP's or aggregator's review shall be informed of the right to file a complaint with the REP's or aggregator's supervisory review process, if available, and, if not available, with the commission and the Office of Attorney General, Consumer Protection Division. Any supervisory review conducted by the REP or aggregator shall result in a decision communicated to the complainant within ten business days of the request. If the REP or aggregator does not respond to the customer's complaint in writing, the REP or aggregator shall orally inform the customer of the ability to obtain the REP's or aggregator's response in writing upon request.

(e) [~~(d)~~] Complaints to the commission.

(1) Informal complaints.

(A) If a complainant is dissatisfied with the results of a REP's or aggregator's complaint investigation or supervisory review, the REP or aggregator shall advise the complainant of the commission's informal complaint resolution process and the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, Internet website address: www.puc.state.tx.us, TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989.

(B) Complainants should include sufficient information in a complaint to identify the complainant and the company for which the complaint is made and describe the issue specifically. The following information should be included in the complaint [~~Customers are encouraged to include the following in their complaint~~]:

*(i)* The account holder's [~~customer's~~] name, billing and service addresses [~~address~~], and telephone number;

*(ii)* The name of the REP or aggregator;

*(iii)* The customer account number or electric service identifier (ESI);

*(iv)* An explanation of the facts relevant to the complaint; [~~complaints; and~~]

*(v)* The complainant's requested resolution; and

*(vi)* [~~(v)~~] Any [~~other~~] documentation that supports the complaint, including copies of bills or contract documents.

(C) All REPs and aggregators shall provide the commission an email address to receive notification of customer complaints from the commission.

(D) [~~(C)~~] The REP or aggregator shall investigate all informal complaints and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the REP or aggregator.

(E) [~~(D)~~] The commission shall review the complaint information and the REP or aggregator's response and notify the complainant of the results of the commission's investigation.

(2) [~~(E)~~] While an informal complaint process is pending:

(A) [~~(i)~~] The REP or aggregator shall not initiate collection activities, including termination or disconnection of service (as appropriate) or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill.

(B) [~~(ii)~~] A customer shall be obligated to pay any undisputed portion of the bill and the REP may pursue termination or disconnection of service (as appropriate) for nonpayment of the undisputed portion after appropriate notice.

(3) [~~(F)~~] The REP or aggregator shall keep a record for two years after closure [~~determination~~] by the commission of all informal complaints forwarded to it by the commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or rates and charges that are not regulated by the commission, but which are disclosed to the customer in the terms of service disclosures, need not be recorded.

(4) [~~(2)~~] Formal complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. This process may include the formal docketing of the complaint as provided in §22.242 of this title (related to Complaints).

*§25.491. Record Retention and Reporting Requirements.*

(a) Application. This section does not apply to a municipally owned utility where it offers retail electric power or energy outside its certificated service territory or to a REP that is an electric cooperative [~~This section does not apply to a REP that is a municipally owned utility or electric cooperative~~].

(b) Record retention.

(1) Each REP and aggregator shall establish and maintain records and data that are sufficient to:

(A) Verify its compliance with the requirements of any applicable commission rules; and

(B) Support any investigation of customer complaints.

(2) All records required by this subchapter shall be retained for no less than two years, unless otherwise specified.

(3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this subchapter shall be provided to the commission within 15 calendar days of its request.

(c) Annual reports. On June 1 of each year, a REP shall report the information required by §25.107 of this title (relating to Certification of Retail Electric Providers) to the commission and the Office of Public Utility Counsel (OPUC) and the following additional information on a form approved by the commission for the 12-month period ending December 31 of the prior year:

(1) The number of residential customers served, by nine-digit zip code and census tract, by month[~~, to the extent that such zip code and census tract information is available~~];

(2) The number of written denial of service notices issued by the REP, by month, by customer class, by nine-digit zip code and census tract;

(3) The number and total aggregated dollar amount of deposits held by the REP, by month, by customer class, by nine-digit zip code and census tract; [ ~~and~~]

(4) Information relating to the REP's bill payment assistance program for residential electric customers required by §25.480(g)(2)(B) of this title (relating to Bill Payment and Adjustments);

(5) [~~(4)~~] The number of complaints received by the REP from residential customers for the following categories by month, by nine-digit zip code and census tract:

(A) Refusal [~~Denial~~] of electric service, which shall include all complaints pertaining to the implementation of §25.477 of this title (relating to Refusal of Electric Service);

(B) Marketing and quality [~~Quality~~] of customer service, which shall include complaints relating to the interfaces between the customer and the REP, such as, but not limited to, call center hold time, responsiveness of customer service representatives, and implementation of §25.472 of this title (relating to Privacy of Customer Information), §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers), §25.473 of this title (relating to Non-English Language Requirements), §25.476 of this title (relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact), and §25.484 of this title (relating to Texas Electric No-Call List), and which shall not include issues for which the REP is not responsible, such as, but not limited to, power quality, outages, or technical failures of the registration agent;

(C) Unauthorized charges, which shall encompass all complaints pertaining to §25.481 of this title (relating to Unauthorized Charges) [~~billing (cramming)~~];

(D) Enrollment, which shall encompass all complaints pertaining to the implementation of §25.474 of this title (relating to the Selection of Retail Electric Provider), §25.478 of this title (relating to Credit Requirements and Deposits), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider) [~~Unauthorized change of a REP (slamming)~~];

(E) Accuracy of billing services, which shall encompass all complaints pertaining to the implementation of §25.479 of this title (relating to Issuance and Format of Bills); and

(F) Collection and service [~~contract~~] termination, and disconnection, which shall encompass all complaints pertaining to the implementation of §25.480 of this title (relating to Bill Payment and Adjustments), §25.482 of this title (relating to Termination of Service), and §25.483 of this title (relating to Disconnection of Service).

(6) In reporting the number of informal complaints received pursuant to paragraph (4) of this subsection, a REP may identify the number of complaints in which it has disputed categorization or assignment pursuant to the provisions set forth in §25.485 of this title (relating to Customer Access and Complaint Handling).

(d) Additional information. Upon written request by the commission or OPUC [~~the Office of Public Utility Counsel (OPC)~~], a REP or aggregator shall provide within 15 days any information, including but not limited to marketing information, necessary for the commission or OPUC [~~OPC~~] to investigate an alleged discriminatory practice prohibited by §25.471(c) of this title (relating to General Provisions of the Customer Protection Rules).

*§25.493. Acquisition and Transfer of Customers from one Retail Electric Provider to Another.*

(a) Notice requirement. Any retail electric provider (REP) that will acquire customers from another REP due to acquisition, merger, bankruptcy, or any other reason, shall provide notice to every affected customer. The notice may be in a billing insert or separate mailing, at least 30 days prior to the transfer, if practicable. If legal or regulatory constraints prevent the sending of advance notice, the notice shall be sent promptly after all legal and regulatory impediments have been removed. Transferring customers from one REP to another does not require advance commission approval.

(b) Contents of notice for adverse changes in terms of service. If the transfer of a customer will materially change the terms of service for the affected customer in an adverse manner, the notice shall:

(1) identify the current and acquiring REP;

(2) explain the reasons for the transfer of the customer's account to the new REP;

(3) explain that the customer may select another REP without penalty due to the adverse change in the terms of service, and if the customer desires to do so, that they should contact another REP;

(4) identify the date that customers will be or were transferred to the acquiring REP;

(5) provide the new terms of service, including the Electricity Facts Label of the acquiring REP; and

(6) provide a toll-free number for a customer to call for additional information.

(c) Contents of notice for transfers with no adverse change in terms of service. If a transfer of a customer will not result in a material

adverse change to the terms of service for the affected customer, the notice is not required to contain the information required by subsection (b)(3) of this section.

(d) Process to transfer customers. The registration agent shall develop procedures to facilitate the expeditious transfer of large numbers of customers from one REP to another.

*§25.495. Unauthorized Change of Retail Electric Provider.*

(a) Process for resolving unauthorized change of retail electric provider (REP). If a REP is serving a customer without proper authorization pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), the REP, registration agent, and transmission and distribution utility (TDU) shall follow the procedures set forth in this subsection.

(1) The REP shall notify the registration agent of the unauthorized change of REP as promptly as possible.

(2) As promptly as possible following notice by the REP, the registration agent shall facilitate the prompt return of the customer to the original REP, or REP of choice in the case of a move-in.

(3) The affected REPs, the registration agent, and the transmission and distribution utility shall take all actions necessary to return the customer to the customer's original REP, or REP of choice in the case of a move-in, as quickly as possible.

(4) The affected REPs, the registration agent, and the TDU shall take all actions necessary to bill correctly all charges, so that the end result is that:

(A) the REP that served the customer without proper authorization shall pay all transmission and distribution charges associated with returning the customer to its original REP, or REP of choice in the case of a move-in;

(B) unless otherwise agreed to by all affected REPs:

*(i)* the original REP has the right to bill the customer pursuant to §25.480(b) of this title (relating to Bill Payment and Adjustment) at the price disclosed in its terms of service for the time period of the unauthorized switch or move-in; and

*(ii)* the REP that served the customer without proper authorization shall refund all charges paid by the customer for this time period within five business days after the customer is returned to the original REP, or REP of choice in the case of a move-in;

(C) the customer shall pay no more than the price at which the customer would have been billed had the unauthorized switch or move-in not occurred;

(D) the TDU has the right to seek collection of non-bypassable charges from the REP that ultimately bills the customer under subparagraph (B) of this paragraph; and

(E) the REP that ultimately bills the customer under subparagraph (B) of this paragraph is responsible for non-bypassable charges and wholesale consumption for the customer.

(5) The original REP shall provide the customer all benefits or gifts associated with the service that would have been awarded had the unauthorized switch or move-in not occurred, upon receiving payment for service provided during the unauthorized change;

(6) The affected REPs shall communicate with the customer as appropriate throughout the process of returning the customer to the original REP or REP of choice and resolving any associated billing issues.

(b) Customer complaints, record retention and enforcement.

(1) Customers may file a complaint with the commission, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling), against a REP for an alleged failure to comply with the provisions of this section.

(2) Upon receipt of a customer complaint, each REP shall:

(A) respond to the commission within 21 calendar days after receiving the complaint and in the response to the complaint provide to the commission all documentation relied upon by the REP and related to the:

*(i)* authorization and verification to switch the customer's service; and

*(ii)* corrective actions taken to date, if any.

(B) cease any collection activity related to the alleged unauthorized switch or move-in until the complaint has been resolved by the commission.

*§25.497. Critical Care Customers.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise.

(1) Critical load public safety customer--A customer for whom electric service is considered crucial for the protection or maintenance of public safety, as defined in §25.52 of this title (relating to Reliability and Continuity of Service) is a "critical load public safety customer." Such customer shall qualify as a "critical load" under §25.52(c)(1) of this title and qualify for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the transmission and distribution utility's (TDU) tariff for retail delivery service. In order to be eligible for this status, the customer must have a determination of eligibility pending with or approved by the TDU. The customer shall notify the retail electric provider (REP) that the customer may qualify. The REP shall convey any such notice to the TDU. Pursuant to a process determined collaboratively between the TDU and REP, eligibility will be determined by the TDU.

(2) Critical care industrial customer--An industrial customer, for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition on the retail customer's premises, is a "critical care industrial customer." Such customer shall qualify for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the TDU's tariff for retail delivery service. In order to be eligible for this status, the customer must have a determination of eligibility pending with or approved by the TDU. The customer shall notify the REP that the customer may qualify. The REP shall convey any such notice to the TDU. Pursuant to a process determined collaboratively between the TDU and REP, eligibility will be determined by the TDU.

(3) Critical care residential customer--A residential customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition is a "critical care residential customer." Such customer shall qualify as a "critical load" under §25.52(c)(1) of this title and for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the TDU's tariff for retail delivery service. In order to be eligible for this status, the customer must have the commission standardized Critical Care Eligibility Determination Form pending with or approved by the TDU. The customer shall notify the REP that the customer may qualify. The REP shall convey any such notice to the TDU. Eligibility will be determined by the TDU, pursuant to the procedures described in subsection (b) of this section.

(b) Procedure for qualifying critical care residential customers.

(1) A REP shall advise customers of their rights relating to critical care designation in the terms of service documents.

(2) Upon a customer request, the REP shall mail to the customer the commission's standardized Critical Care Eligibility Determination Form.

(3) The customer shall then return the completed form to the REP.

(4) After the REP receives the completed form, it shall evaluate the form for completeness, and if the form is complete, the REP shall then forward the form to the appropriate TDU. If the form is incomplete, the REP shall notify and return the form to the customer.

(5) A customer shall be considered "qualified" when the TDU receives the Critical Care Eligibility Determination Form, but the TDU shall remove the designation should the customer ultimately not qualify after evaluation.

(6) After a TDU receives the completed form from the REP, it shall evaluate the information on the form. If the TDU needs additional information from the customer, the TDU shall notify the REP before contacting the customer to request such information.

(7) The evaluation and qualification process shall not take longer than one month from the date the TDU receives the Critical Care Eligibility Determination Form.

(8) The TDU shall notify the customer and the customer's REP of its ultimate qualification determination.

(9) A customer may appeal the eligibility determination directly to the TDU. The TDU may set guidelines for the appeals process. A TDU shall notify the customer and the customer's REP of any change in qualification based on the appeal.

(10) Qualification is valid for one year from date qualification was granted. If a TDU renews all customers once a year, regardless of qualification date, a renewal shall not be required for customers qualified less than one year.

(11) The TDU is responsible for notifying the customer's current REP of record 60 days prior to the annual expiration date of the qualification, so the REP can begin the renewal process.

(12) To commence renewal, the REP shall provide the customer with the commission standardized Critical Care Eligibility Determination Form and shall inform the customer that, unless renewed, the customer's critical care designation will expire. The renewal process shall be the same as the initial qualification process.

(c) Effect of critical care status on payment obligations. Qualification under this section does not relieve the customer of the obligation to pay the REP or the TDU for services rendered. However, a critical care residential customer may qualify for deferral of disconnection by following the procedures set forth in §25.483(h) of this title (relating to Disconnection of Service) or Section 5.3.7.4(3) of the TDU's tariff for retail delivery service or may contact the REP regarding other forms of payment assistance.

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 October 20, 2003.

TRD-200306926
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 936-7223

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**16 TAC §25.474**

*(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The commission proposes these sections pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (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. The commission also proposes this rule pursuant to PURA §39.101, which grants the commission authority to establish various, specific protections for retail customers; §39.102, which provides retail customer choice; and PURA chapter 17, subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.102, and PURA chapter 17, subchapters A, C and D.

*§25.474. Selection or Change of Retail Electric Provider.*

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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Public Utility Commission of Texas
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# PART 9. TEXAS LOTTERY COMMISSION

## CHAPTER 402. BINGO REGULATION AND TAX

**16 TAC §402.530**

The Texas Lottery Commission proposes new section 16 TAC §402.530 relating to the registry of approved bingo workers. The new section addresses the statutory requirement in Occupations Code §2001.313 that provides that the commission shall maintain a registry of persons on whom the commission has conducted a criminal history background check and who are approved to be involved in the conduct of bingo or to act as a bingo

operator. The new section also addresses the statutory requirement in Occupations Code §2001.314 which provides that the commission may require a person listed in the registry of approved bingo workers to wear an identification card to identify the person to license holders, bingo players, and commission staff while the person is on duty during the conduct of bingo. Specifically, the new section adds definitions for persons who must be listed on the registry of workers, provides a procedure for initial application and subsequent intent to remain on the register, supplies information on operator designation by an authorized organization, clarifies what is necessary to be included on the registry of approved bingo workers, specifies change of information notification requirements, states the requirements for issuance, display, and production of the identification card or form, provides instructions for reporting conduct which could constitute grounds for removal or refusal to list on the registry, provides information on the registry as it relates to temporary licenses, and sets out the notification process for refusal or removal from the registry of approved workers.

Lee Deviney, Financial Administration Director, has determined that for the first five year period the new rule is in effect, there will be no fiscal impact for state or local government as a result of enforcing this rule. Since there is no appropriation authority for HB 2519, the Commission will absorb any anticipated costs for the registry. However, this rule provides that the Commission shall collect cost reimbursements for the identification cards and forms. Therefore, for each year of the first five years the new rule will be in effect, the fiscal impact is as follows: FY 04, $0; FY 05, $0; FY 06, $0; FY 07, $0 and FY 08, $0. Additionally, the fiscal impact on charitable bingo organizations is not expected to be significant. No fiscal impact is anticipated on small businesses, micro businesses or local or state employment as a result of implementing the rule.

William L. Atkins, Director, Charitable Bingo Operations Division, has determined that for each of the first five years the section as proposed is in effect, the public benefit anticipated as a result of the proposed new section is to clarify the process involved in connection with the registry of approved bingo workers. The authority to maintain a registry of approved bingo workers on whom the commission has conducted a criminal history background check and who are approved to conduct bingo was provided for in House Bill 2519, 78th Legislature, Regular Session. Additionally, licensees and interested persons will know the requirements for an individual to be listed on the registry of workers. Finally, the adoption of the rule will help to make certain that only persons who have undergone a criminal history background check and are eligible will be working at bingo occasions.

Written comments on the proposed new rule may be submitted to Penny A. Wilkov, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments must be submitted within 30 days from the date the proposal is published in the Texas Register to be considered.

The proposed new rule is proposed under Occupations Code, Section 2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, Section 467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, under Occupations Code, Section 2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose and under Occupations Code, Section 2001.314 which authorizes the Commission to adopt rules to require a person listed in the registry to wear an identification card as prescribed by form and content.

The new rule implements Occupations Code, Chapter 2001.

*§402.530. Registry of Approved Bingo Workers.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Caller--the term "caller" means an individual who operates the bingo ball selection device and announces the balls selected.

(2) Cashier--the term "cashier" means an individual who sells and records bingo card and pull tab sales to bingo players and/or pays winners the appropriate prize.

(3) Manager--the term "manager" means an individual who oversees the day-to-day operation of the bingo premises.

(4) Operator--the term "operator" means an active bona fide member of a licensed authorized organization that has been designated on a form prescribed by the Commission prior to acting in the capacity as the organization's primary operator. An individual designated by an authorized organization as an "alternate operator" shall perform all the duties and responsibilities of an operator in the absence of the primary operator.

(5) Sales Person--the term "sales person" means an individual who monitors bingo players, sells bingo cards and pull tabs, verifies winners and/or awarding prizes. A sales person may be referred to as a floor worker, runner or usher.

(b) Who must be listed on the Registry of Approved Bingo Workers. The following persons must be listed on the Registry of Approved Bingo Workers prior to being involved in the conduct of bingo:

(1) Operator

(2) Manager

(3) Cashier

(4) Usher

(5) Caller

(6) Salesperson

(c) Registrants submitted on or before February 1, 2004. A registrant submitted as a worker or operator for an authorized organization is considered listed on the registry if the prescribed form listing the individual was postmarked on or before February 1, 2004. These individuals must then verify their intent to remain on the registry by no later than June 1, 2004. Each individual must submit a completed Texas Application for Registry of Approved Bingo Workers as prescribed by the commission to remain on the Registry of Approved Bingo Workers.

(d) Registrants submitted after February 1, 2004. A registrant submitted as a worker or operator for a licensed authorized organization after February 1, 2004 must do so on a form prescribed by the commission. The registrant will be added to the registry as soon as possible after the commission has determined that the person is eligible to be involved in the conduct of bingo or act as an operator.

(e) For purposes of the Registry of Approved Bingo Workers, each operator must be designated on the licensed authorized organization's license to conduct bingo application pursuant to the Occupations Code, §2001.102(10) as the member who will be responsible for the conduct of bingo under the terms of the license and the Bingo Enabling Act. An individual included on the registry may not serve as

the primary operator for an organization until the approved license to conduct bingo has been issued to the licensed organization listing the individual as the operator, received by the organization, and displayed at the location. An organization must submit a registered operator on a form prescribed by the commission prior to the operator acting in the capacity of primary operator.

(f) Expiration of listing on registry of approved bingo workers. A registrant's listing on the registry is valid for three years from the last date of inclusion on the registry, unless the individual's listing is removed for cause prior to the expiration of three years. Every three years after the date the person's name is listed on the registry the individual shall submit a form prescribed by the commission stating the person's intent to remain on the registry. Failure to timely submit the prescribed form will result in the deletion of the worker's name from the registry. A person whose name is deleted from the registry due to failure to verify the intent to remain on the registry may be re-listed on the registry by filing the required form.

(g) How to be listed on the Registry of Approved Bingo Workers. For a person to be listed on the Registry of Approved Bingo Workers, a person must:

(1) complete a Texas Application for Registry of Approved Bingo Workers form as prescribed by the Commission;

(2) submit the required fee for the cost of the card or form; and

(3) be determined by the commission to not be ineligible under Section 2001.105(a)(6).

(h) An individual listed on the registry must notify the Commission of any changes to information contained on the Texas Application for Registry of Approved Bingo Workers on file with the Commission within 30 days of the change in information. Such notification shall be in writing or other approved electronic means.

(i) Identification Card for Approved Bingo Worker.

(1) The commission will issue an identification card indicating that the person is listed in the registry. On or after June 1, 2004, a registered worker and operator must wear his/her identification card while on duty.

(2) The identification card worn by the registered worker or operator while on duty must be visible. The identification card shall list the individual's name and unique registration number, as issued by the commission. An individual may obtain the unique registration number from the Registry of Approved Bingo Workers on the commission's website or by requesting the number from the commission.

(3) An identification card is not transferable and may be worn only by the individual identified on the card.

(4) Upon request by a commission employee, a person described in subsection (a) shall present personal photo identification in order to verify the identification card is that person's card.

(j) How to Obtain Approved Identification Cards.

(1) A completed identification card may be obtained from the commission by submitting the required fee and submitting the required form.

(2) The fee for an identification card or identification card form may not exceed $5.00.

(3) An individual may order blank identification card forms that would allow the individual to complete his or her card from the commission. The individual must submit the required fee and the required form for the blank card form.

(4) The identification card prepared by the individual may only be on a prescribed Commission card form and must be legible and include the individual's name and registration number.

(k) A licensed authorized organization which is reporting conduct where there is a substantial basis for believing that the conduct would constitute grounds for removal or refusal to list on the registry shall make the report in writing to: Bingo Registry, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78767-6630.

(l) The provisions of the Occupations Code §2001.313 related to the registry of bingo workers do not apply to an authorized organization that does not have an annual license to conduct bingo who receives a temporary license to conduct bingo.

(m) If the Commission proposes to refuse to add or proposes to remove the person from the Registry of Approved Bingo Workers consistent with Occupations Code, §2001.313, the commission will give notice of the proposed action as provided by Texas Government Code, Chapter 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.

Filed with the Office of the Secretary of State on October 17, 2003.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

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**16 TAC §402.531**

The Texas Lottery Commission proposes new section 16 TAC §402.531 relating to advisory opinions. The new section addresses the statutory requirement in Occupations Code §2001.059 that authorizes a person to request an advisory opinion from the commission regarding compliance with Occupations Code, Chapter 2001, Bingo Enabling Act and this chapter. Specifically, the new section clarifies the process of requesting an opinion and submitting the request to the commission, provides information on the notification process of the advisory request number and date of request by the commission, delegates the authority to issue advisory opinions to the Charitable Bingo Operations Division, specifies the process for submitting additional information or arguments or briefs, and supplies information on the subject matter and response that the commission will provide in regard to pending litigation, disputed facts, and reliance on the opinion.

Lee Deviney, Financial Administration Director, has determined that for the first five year period the new rule is in effect, there will be no fiscal impact for state or local government as a result of enforcing this rule. Since there is no appropriation authority for HB 2519, the Commission will absorb any anticipated costs. Therefore, for each year of the first five years the new rule will be in effect, the fiscal impact is as follows: FY 04, $0; FY 05, $0; FY 06, $0; FY 07, $0 and FY 08, $0. Additionally, there will be no adverse effect on small businesses, micro businesses or local or state employment as a result of implementing the rule change.

William L. Atkins, Director, Charitable Bingo Operations Division, has determined that for each of the first five years the section as proposed is in effect, the public benefit anticipated as a result of the proposed new section is to clarify the process involved in connection with advisory opinions. The authority to issue advisory opinions is provided for in House Bill 2519, 78th Legislature, Regular Session. As a result of the rule, licensees and interested persons will know the process to follow and the information that should be submitted when requesting an advisory opinion.

Written comments on the proposed new rule may be submitted to Penny A. Wilkov, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments must be submitted within 30 days from the date the proposal is published in the Texas Register to be considered.

The proposed new rule is proposed under Occupations Code, Section 2001.054 which authorizes the commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, Section 467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, and under Occupations Code, Section 2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, and Occupations Code, Section 2001.059 which authorizes the Texas Lottery Commission to provide advisory opinions when requested.

The new rule implements Occupations Code, Chapter 2001.

*§402.531. Advisory Opinions.*

(a) Time Period

(1) The commission shall respond to an advisory opinion request not later than the 60th day after the later date of when the commission receives the written request containing sufficient facts or receives the additional information pursuant to a request for additional information to provide an answer on which the requestor may rely. However, if the commission requests an attorney general opinion on a matter that is the subject of an advisory opinion request the deadlines are tolled until 30 days following the issuance of the attorney general opinion.

(2) The commission shall notify the person making the request of the date the advisory opinion request is received and of the advisory opinion number.

(3) The authority granted by §2001.059 is delegated to the Charitable Bingo Operations Director or his designee. The General Counsel must approve the advisory opinion prior to the issuance of the advisory opinion by the Charitable Bingo Operations Director. The commission by separate order may delegate to an employee of the commission the authority granted.

(4) The Texas Lottery Commission retains the authority to issue advisory opinions pursuant to §2001.059. The delegation of authority merely augments the Texas Lottery Commission's ability to perform the duties and functions of the Texas Lottery Commission with respect to issuing advisory opinions.

(b) Request for an Advisory Opinion

(1) A person requesting an advisory opinion shall do so by sending the request in writing addressed to Advisory Opinion, Charitable Bingo Operations Division, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630 or by e-mail to Advisory.Opinion@lottery.state.tx.us.

(2) A request for an advisory opinion shall describe a specified factual situation. The request shall make clear that it is a request for an advisory opinion under §2001.059 and state in sufficient detail all facts upon which the request for opinion is based to permit the commission to provide a response to the request and shall contain the name and address of the person requesting the opinion. The request may be accompanied by supporting arguments and citations of law or rules as the requesting person deems pertinent. Any other person may also submit arguments, citations of law or rules, or legal briefs within 30 days of the date of the request for opinion.

(c) Request for Additional Information

(1) If the commission determines that the request for an advisory opinion does not contain sufficient facts to provide an answer, the commission shall request additional written information from the requestor not later than ten (10) days after the request for advisory opinion was received by the Commission.

(2) If no additional information is supplied in response to the commission request for additional written information from the requestor, after the commission determines that the request does not contain sufficient facts to provide an answer, then no opinion can be issued and the advisory opinion request file will be closed. In this instance, the requestor will be given a statement that no opinion can be expressed with regard to a given fact situation due to the failure to supply additional information.

(3) The response to a commission request for additional information shall be addressed to Advisory Opinion, The Charitable Bingo Operations Division, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630 or by e-mail to Advisory.Opinion@lottery.state.tx.us in order to permit the commission to provide a response to the request.

(d) Subject of an Advisory Opinion

(1) The commission will not issue an advisory opinion that concerns the subject matter of pending litigation or contested case proceeding notification of intended action known to the commission other than to provide a response which refers to the applicable statutes and rules cited in the pending litigation or contested case proceeding notification.

(2) An advisory opinion cannot resolve a disputed question of fact other than to provide a response which refers to the applicable statutes and rules.

(e) Response

(1) A request for an advisory opinion that contains sufficient facts shall initially be referred to any appropriate personnel within the Charitable Bingo Operations Division for review and written comment.

(2) If the commission determines that a request for an advisory opinion has already been answered by the commission, then the commission may provide a written response to the requestor that cites the prior advisory opinion.

(3) The commission may publish the response on its website.

(4) The response shall clearly state that the opinion is advisory in nature and is restricted to the fact situation identified in the opinion.

(5) An advisory opinion may be relied upon by the requestor as well as any other person whose conduct is substantially consistent with the opinion and the facts stated in the request.

(6) The commission cannot grant nor confer legal authority beyond the statute or rule which is the subject of the request for advisory opinion

(7) A previously issued advisory opinion not in accord with the current Commission statutes and rules may be modified or revoked, but in such an instance the modification or revocation shall operate prospectively only.

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 October 17, 2003.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 344-5113

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**16 TAC §402.573**

The Texas Lottery Commission proposes new section 16 TAC §402.573 relating to the gift certificates. The new section addresses the statutory requirement in Occupations Code §2001.4155 that provides that a licensed authorized organization is not prohibited from selling or redeeming a gift certificate and that the licensed authorized organization that sells or redeems a gift certificate must keep adequate records relating to the gift certificate. Specifically, the new section includes information on the requirements for commercially printing a gift certificate, specifies the guidelines for awarding a gift certificate as a prize for bingo or a door prize, explains what information must be included in imprinting a gift certificate, contains information concerning payment for the certificate and provides for a limitation on the location where a gift certificate may be accepted. The new section also specifies the record keeping requirements of the organizations who participate in selling or accepting gift certificates including the required segregation of funds, provisions for monthly disbursements among participating organizations for unredeemed certificates, requirements for the timely depositing of funds from redeemed certificates into the bank account, provides information on reporting the redemption and reconciling the gift certificates among participating organizations. The new section also clarifies that the records must be maintained and available for inspection for four years and requires that participating organizations collectively maintaining a gift certificate log and the information required to be maintained.

Lee Deviney, Financial Administration Director, has determined that for the first five year period the new rule is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing this rule. Therefore, for each year of the first five years the new rule will be in effect, the fiscal impact is as follows: FY 04, $0; FY 05, $0; FY 06, $0; FY 07, $0 and FY 08, $0. Additionally, there will be no adverse effect on small businesses, micro businesses or local or state employment as a result of implementing the rule.

William L. Atkins, Director, Charitable Bingo Operations Division, has determined that for each of the first five years the section as proposed is in effect, the public benefit anticipated as a result of the proposed new section is to clarify the process involved in connection with the use of gift certificates. The authority to regulate the recordkeeping involved with gift certificates was provided for in House Bill 2519, 78th Legislature, Regular Session. Additionally, licensees and interested persons will know the requirements for using and accounting for gift certificates sold and redeemed by licensees.

Written comments on the proposed new rule may be submitted to Penny A. Wilkov, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments must be submitted within 30 days from the date the proposal is published in the Texas Register to be considered.

The proposed new rule is proposed under Occupations Code, Section 2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, Section 467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, under Occupations Code, Section 2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, and under Occupations Code, Section 2001.4155(b) which authorizes the Commission to adopt rules to provide that a licensed authorized organization that sells or redeems a gift certificate must keep adequate records relating to the gift certificate.

The new rule implements Occupations Code, Chapter 2001.

*§402.573. Bingo Gift Certificates.*

(a) A bingo gift certificate may be sold, issued, or redeemed for bingo paper, pull-tab bingo or card-minding devices provided that the licensed authorized organization or unit, as defined in Occupations Code §2001.431(1), maintains adequate records relating to the gift certificate as provided in this section.

(b) A licensed authorized organization's cost of printing the bingo gift certificate is an allowable bingo expense and shall be paid out of the bingo checking account. In order to maintain adequate records relating to gift certificates, all gift certificates must be purchased from a commercial printer and shall be pre-numbered and consecutively issued.

(c) A bingo gift certificate may not be awarded as a prize for bingo unless the value of the certificate is paid for by the licensed authorized organization, recorded as a bingo prize on the daily schedule of prizes for the bingo occasion, and five percent of the value of the prize is withheld as a prize fee.

(d) A bingo gift certificate may not be awarded as a door prize unless the value of the certificate is paid for before it is awarded as a door prize and funds other than bingo proceeds are used to obtain the gift certificate.

(e) Each bingo gift certificate shall be:

(1) imprinted with the name and address of the licensed location where the gift certificate may be redeemed for bingo paper, pull-tab bingo or card-minding devices;

(2) imprinted with the monetary value of the certificate;

(3) imprinted with the name of the licensed authorized organization authorized to accept the bingo gift certificate at the licensed location;

(4) imprinted with the expiration date or a blank space for the licensed authorized organization or unit to fill in an expiration date; and

(5) paid for by the customer in full at the time it is issued by the licensed authorized organization or unit.

(f) A licensed authorized organization may not accept a gift certificate in exchange for bingo paper, pull-tab bingo or card-minding devices if the licensed authorized organization is not licensed to conduct bingo at the licensed location imprinted on the gift certificate.

(g) Reporting Requirements:

(1) Funds from the sale of the gift certificate shall be maintained separately from the bingo funds. Such funds are not considered bingo funds until the gift certificate is redeemed for a bingo card, pull-tab bingo, or a card-minding device.

(2) Funds remaining from an expired or unredeemed gift certificate shall be disbursed equally among the participating licensed authorized organizations and deposited into each of their respective general fund accounts.

(3) When a gift certificate is redeemed, the sale of bingo paper, card-minding device, or pull-tab bingo shall be reported for that occasion. The gift certificate, when redeemed, shall be exchanged for cash from the gift certificate funds and deposited into the bingo account by the end of the next business day as required by Occupations Code §2001.451.

(4) At the end of each month, the licensed authorized organizations collectively shall reconcile the gift certificates purchased, sold, expired, redeemed, or remaining during the month to the cash on hand.

(h) Records Retention. The purchase invoice or receipt from the printing of a gift certificate and the reconciliation documents relating to the sale or redemption of gift certificates must be maintained and available for inspection by the commission for a period of four years.

(i) Gift Certificate Log. A gift certificate log shall be maintained collectively by the participating licensed authorized organizations at the location and shall include the following for each gift certificate:

(1) certificate number;

(2) certificate value;

(3) date of issue;

(4) expiration date;

(5) date of redemption; and,

(6) if awarded as a bingo or door prize, the date of the bingo occasion and the date the prize is awarded.

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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

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**16 TAC §402.590**

The Texas Lottery Commission proposes new section 16 TAC §402.590 relating to the commission's examination of licensee's bingo records during a general audit. Specifically, the new section identifies the process by which the commission may initiate and execute a formal review of a licensee's bingo related accounting records to determine compliance with Occupations Code, Chapter 2001.

Lee Deviney, Financial Administration Director, has determined for the first five year period the new rule is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing this rule. Any costs to the State could be absorbed by current resources. For each year of the first five years the section will be in effect, the fiscal impact is the following: FY 04, $0; FY 05, $0; FY 06, $0; FY 07, $0 and FY 08, $0. Additionally, there will be no effect on small businesses, micro businesses or local or state employment unless the licensee wants the audit to be conducted at a location other than the Commission's regional office in which case the organization will be required to pay for the costs incurred as a result of conducting the audit.

William L. Atkins, Director, Charitable Bingo Operations Division, has determined that each of the first five years the section as proposed is in effect, licensees will benefit from the adoption of the section. The anticipated benefit as a result of the proposed new section is to clarify the purpose of a general audit and to inform persons of what will occur during a general audit.

Written comments on the proposed new rule may be submitted to Kevin Oldham, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The proposed new rule is proposed under Occupations Code, Section 2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, Section 467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, under Occupations Code, Section 2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, under Occupations Code, Section 2001.560(c) which provides that the commission may examine the books, papers, records, equipment and place of business of a licensee, and Occupations Code, Section 2001.560(d) which provides that the commission may charge a licensee an amount reasonably necessary to recover costs associated with an authorized audit or investigation.

The new rule implements Occupations Code, Chapter 2001.

*§402.590. General Audit Rule.*

(a) Definitions.

(1) For purposes of this section, a licensee may include a person issued a license under Occupations Code, Chapter 2001, or a Unit.

(2) "Re-deposit" means the amount of money that must be deposited into the bingo account to restore bingo proceeds that were disbursed from the bingo account for items not authorized by the Bingo Enabling Act or the amount of bingo proceeds not deposited in the bingo account as required by Occupations Code, Chapter 2001, Section 2001.451(b).

(b) General Provisions. The commission will perform an audit to determine whether a licensee is in compliance with the requirements of Occupations Code, Chapter 2001 and the charitable bingo administrative rules ("rules"). The audit will be conducted in accordance with the Charitable Bingo Operations Division Audit Reference and Procedures Manual. An audit is a formal examination of a licensee's accounting records and business activities. An audit may be conducted as a result of:

(1) a request by Charitable Bingo Operations Division management;

(2) a request by another division of the commission;

(3) a request by a commission auditor based on compliance violations noted in a previous inspection, game observation, or review; or

(4) by random selection process based on the division's risk assessment.

(c) Notification. The commission will notify in writing the licensee's primary operator, business contact, officer, unit manager or designated agent. The notification letter will state the period to be audited and identify the records that must be available for commission review. Certain forms including, but not limited to, a questionnaire and a physical inventory request with instructions, may be sent by the commission to the licensee with the notification letter. The forms must be completed prior to the entrance conference and the information must be provided in the manner prescribed by the commission. Not later than 10 working days from the date of the notification letter, the auditor will contact the licensee and schedule the date, time and place of the entrance conference. If the auditor is unable to coordinate with the licensee regarding the date and time of the entrance conference, the auditor shall set the date and time of the entrance conference and provide the licensee with written notice of the entrance conference at least 10 working days prior to the entrance conference.

(d) Records Required. Records covering the designated audit period must be provided to the auditor at the entrance conference. The auditor may require other records or information based on findings during the audit. If applicable to the licensee, it must provide all records pertaining to:

(1) The operation of bingo;

(2) The licensee's charitable distributions;

(3) The licensee's charitable purpose;

(4) Rental receipts;

(5) Expenditures; and,

(6) Lease agreements.

(e) Entrance Conference.

(1) The auditor will meet with the responsible persons including the primary operator, business contact, bookkeeper, unit manager, designated agent or any other person familiar with the licensee's bingo operations. The licensee must complete the forms included with the notification letter prior to the entrance conference and must provide the requested records and completed forms at the entrance conference.

(2) If disclosure of confidential information during the audit would impair a constitutional or statutory right of privacy, then the information may be withheld so long as the licensee provides the commission with a brief description of the information withheld, the statutory or constitutional basis for non-disclosure, and the records necessary to substantiate compliance with Occupations Code, Chapter 2001 and applicable commission rules. Information the licensee believes is privileged, such as a privileged attorney/client communication or any other privilege recognized under the Texas Rules of Evidence, may be withheld so long as the licensee provides the commission with a brief description of the information withheld, the privilege claimed, and the records necessary to substantiate compliance with Occupations Code, Chapter 2001 and applicable commission rules.

(3) The ability of the licensee to withhold certain information based on privacy rights or privileges does not in any way relieve the licensee of its burden to substantiate compliance with Occupations Code, Chapter 2001 and applicable commission rules. If any records requested are not provided at the time of the entrance conference the auditor will issue a written final request for these records. Except for information that is withheld due to the licensee's claim of a valid privilege, the requested records must be provided within 10 working days of receipt of the request.

(4) The auditor and the licensee's authorized representative will sign a receipt form documenting the specific original records received by the auditor. Alternatively, the licensee may provide the auditor with copies of all requested records at the expense of the licensee.

(5) The audit fieldwork is routinely conducted at the commission's regional office. If the licensee wants the audit to be conducted at a location other than the commission's regional office, the organization shall pay the costs incurred as a result of conducting the audit. Costs will be paid pursuant to terms and conditions as outlined in the most recent State of Texas Travel Allowance Guide published by the Texas Comptroller of Public Accounts.

(f) Fieldwork. The audit may include, but is not limited to, reviewing the licensee's financial records, performing a game observation, preparing paper depletion analysis, preparing pull-tab ticket analysis, examining all books and records necessary to substantiate the licensee's quarterly reports, verifying that bingo proceeds are disbursed according to the Bingo Enabling Act and rules, and meeting with members of the licensee involved in bingo to discuss its bingo operation. The auditor will provide the licensee with an estimated completion date of all fieldwork.

(g) Exit Conference.

(1) At the conclusion of the audit, the auditor will schedule an exit conference with the licensee. At the exit conference, the auditor will provide the licensee with the draft audit report, present audit findings, discuss violations noted, explain any audit schedules and explain any supporting exhibits. The auditor will also return original records to the licensee.

(2) The licensee may be represented by the primary operator, business contact, officer, unit manager, designated agent or any other person familiar with the bingo operations and accounting systems.

(3) The licensee will have an opportunity to gather additional documentation related to the audit findings, violations, or fund reimbursement. The licensee may use the exit conference as an avenue to resolve any audit violations. The licensee will have 15 working days after the exit conference date to respond in writing to all relevant audit findings and recommendations contained in the draft audit report.

(4) The licensee must make available a copy of the audit report with detailed findings, recommendations and responses to all officers, directors, and members of the licensee.

(h) Resolution. Proof of corrective measures taken to address any audit violations must be submitted in writing to the commission within 30 working days of the exit conference. If it is determined that

a licensee must make a re-deposit into its bingo bank account, the re-deposit may not be made with funds derived from the conduct of bingo.

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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

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**16 TAC §402.592**

The Texas Lottery Commission proposes new section 16 TAC §402.592 relating to books and records inspections. Specifically, the new section identifies the process by which the commission may exercise an education-based review of a licensee's bingo related accounting records.

Lee Deviney, Financial Administration Director, has determined for the first five year period the new rule is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing this rule. Any costs to the State could be absorbed by current resources. For each year of the first five years the section will be in effect, the fiscal impact is the following: FY 04, $0; FY 05, $0; FY 06, $0; FY 07, $0 and FY 08, $0. Additionally, there will be no effect on small businesses, micro businesses or local or state employment.

William L. Atkins, Director, Charitable Bingo Operations Division, has determined that each of the first five years the section as proposed is in effect, licensees will benefit from the adoption of the section. The anticipated benefit as a result of the proposed new section is to clarify the purpose of a books and records inspection and inform persons of what will occur during a books and records inspection.

Written comments on the proposed new rule may be submitted to Kevin Oldham, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The proposed new rule is proposed under Occupations Code, Section 2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, Section 467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, under Occupations Code, Section 2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, and under Occupations Code, Section 2001.560(c) which provides that the commission may examine the books, papers, records, equipment and place of business of a licensee.

The new rule implements Occupations Code, Chapter 2001.

*§402.592. Books and Records Inspection.*

(a) Purpose. The books and records inspection is an education-based review designed to train a licensee in the proper method of establishing and maintaining bingo related accounting records. The books and records inspection will be conducted by the commission within six months of issuance of the original license or as otherwise necessary. The books and records inspection will be conducted at a time other than a bingo occasion. However, the auditor may observe an occasion as deemed necessary.

(b) Scope. The scope of a books and records inspection shall cover a minimum of one calendar quarter. A books and records inspection will be conducted in accordance with the procedures contained in the Charitable Bingo Operations Division Audit Reference and Procedures Manual.

(c) Notification. The commission will notify in writing the licensee's operator or business contact of the books and records inspection. An operator or business contact must attend the books and records inspection. In addition, any person with knowledge of the operation and record keeping practices may accompany the operator or business contact.

(d) Inspection. The books and records to be reviewed or examined will include those records that relate to the operation of bingo and the licensee's charitable distributions. The books and records inspection is a limited examination of the licensee's records and is not intended to replace an audit conducted in accordance with §402.590 of this title.

(e) Inspection Results. At the conclusion of the books and records inspection, the auditor will communicate any compliance issues noted during the inspection and make recommendations to the operator, business contact or any person with knowledge of the operation and recordkeeping practices of the licensee. The auditor will request the operator or business contact to sign a form stating that he or she understands the findings, if any. If the operator or business contact refuses to sign the form, the auditor will indicate the refusal on the form. The auditor will provide the operator or business contact with a copy of the form. If the books and records inspection reveals numerous or serious compliance issues, the commission may undertake further reviews of the licensee's records as appropriate.

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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

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**16 TAC §402.596**

The Texas Lottery Commission proposes new section 16 TAC §402.596 relating to compliance reviews of licensee's bingo records. Specifically, the new section identifies the process by which the commission may initiate and execute an informal review of a licensee's bingo related accounting records to determine compliance with Occupations Code, Chapter 2001.

Lee Deviney, Financial Administration Director, has determined for the first five year period the new rule is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing this rule. Any costs to the State could be

absorbed by current resources. For each year of the first five years the section will be in effect, the fiscal impact is the following: FY 04, $0; FY 05, $0; FY 06, $0; FY 07, $0 and FY 08, $0. Additionally, there will be no effect on small businesses, micro businesses or local or state employment.

William L. Atkins, Director, Charitable Bingo Operations Division, has determined that each of the first five years the section as proposed is in effect, licensees will benefit from the adoption of the section. The anticipated benefit as a result of the proposed new section is to clarify the purpose of a compliance review and to inform persons of what will occur during the compliance review process.

Written comments on the proposed new rule may be submitted to Kevin Oldham, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The proposed new rule is proposed under Occupations Code, Section 2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, Section 467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, under Occupations Code, Section 2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, and under Occupations Code, Section 2001.560(c) which provides that the commission may examine the books, papers, records, equipment and place of business of a licensee.

The new rule implements Occupations Code, Chapter 2001.

*§402.596. Compliance Review.*

(a) General Provisions. A compliance review is conducted to determine if a licensee's records are in compliance with Occupations Code, Chapter 2001, and this chapter. The compliance review process may be initiated by, but is not limited to, any of the following:

(1) a request by Charitable Bingo Operations Division management;

(2) a request by another division of the commission;

(3) a request by commission bingo auditors based on compliance violations noted in a previous inspection or game observation, or

(4) by random selection process based on the risk assessment performed by the Charitable Bingo Operations Division.

(b) Scope. The scope of the compliance review is initially limited to the calendar quarter associated with the request for the compliance review or the risk assessment. The scope of the review may be expanded to cover additional calendar quarters if the records warrant. The compliance reviews will be conducted in accordance with the procedures contained in the Charitable Bingo Operations Division Audit Reference and Procedures Manual.

(c) Notification. Notice of the compliance review will be provided in accordance with the provisions of §402.590 of this title.

(d) Entrance Conference. The entrance conference will be conducted in accordance with the provisions of §402.590 of this title.

(e) Fieldwork.

(1) A compliance review may include an examination of the licensee's bingo expenses, receipts, and charitable distributions to determine whether the distributions were consistent with the donor licensee's stated charitable purpose, Occupations Code, Chapter 2001 and the commission's administrative rules, as necessary.

(2) If the auditor determines a more detailed examination of records is necessary, the compliance review will be concluded, and a report will be prepared with the auditor's recommendation that an audit be conducted in accordance with §402.590 of this title.

(f) Exit Conference. An exit conference will be conducted in accordance with the provisions of §402.590 of this title.

(g) Resolution. A resolution resulting from the compliance review process will be conducted in accordance with the provisions of §402.590 of this title.

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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

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# TITLE 22. EXAMINING BOARDS

## PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

**22 TAC §§537.11, 537.22, 537.43, 537.47, 537.49**

The Texas Real Estate Commission (TREC) proposes amendments to §§537.11, 537.22, 537.43, and 537.47, and proposes new §535.49 concerning standard contract forms. These amendments and new section would adopt by reference four revised contract forms to be used by Texas real estate licensees.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

The amendment to §537.11 would renumber the revised forms promulgated by TREC.

The amendment to §537.22 would adopt by reference Standard Contract Form TREC No. 11-5, Addendum for "Back-up" Contract. The form would be revised to clarify Paragraph B. regarding the contingency date and paragraph E. regarding the time for giving notice of termination. Under paragraph B, If the first contract terminates, the effective date of the Back-Up Contract automatically changes to the date the buyer receives notice of termination of the first contract or the contingency date, whichever is earlier and is called the Amended Effective Date. The time for

giving notice of termination in Paragraph E. is clarified to conform to the changes in Paragraph B.

The amendment to §537.43 would adopt by reference Standard Contract Form TREC No. 36-3, Addendum for Property Subject to Mandatory Membership in an Owners' Association, a form that a seller may use to provide certain statutory notices regarding membership in an owners' association. Paragraph A.3. would be changed to delete the language which states that buyer waives the right of termination under the addendum if buyer does not require delivery of the subdivision information.

The amendment to §537.47 would adopt by reference Standard Contract Form TREC No. 40-1, Third Party Financing Condition Addendum. The form would be revised to clarify that "every reasonable effort to obtain financing approval" includes but is not limited to furnishing all information and documents required by lender for approval. The sentence in the introductory paragraph regarding the date by which the buyer must obtain financing approval is revised for buyer to provide written notice to seller within a stated period of days after the effective date if buyer cannot obtain financing approval within the time period. If buyer gives notice within the time period, the contract will terminate and the earnest money will be refunded to buyer. If buyer does not give the notice within the time period, the contract will not be subject to buyer financing approval as described in the addendum. The proposed revised form deletes the options in subparagraphs A.1. and A.2. as to whether the loan will or will not include private mortgage insurance (PMI). Finally, the commission proposes to delete the second part of paragraph C. of the addendum to avoid a potential conflict between the language in the first part of paragraph C regarding the appraised value of the property.

New §537.49 would adopt by reference Standard Contract Form TREC No. 42-0, Notice Pursuant to Third Party Financing Condition Addendum. The form provides a notice to seller that the buyer is unable to obtain financing approval according to the terms of the Third Party Financing Addendum.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro- businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site, and available from private printers at an estimated cost of $7.50 per set of 50 copies.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

*§537.11. Use of Standard Contract Forms.*

(a) Standard Contract Form TREC No. 9-5 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-4 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 11-5 [~~11-4~~] is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 15-2 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC No. 16-2 is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-6 is promulgated for use in the resale of residential real estate. Standard Contract Form TREC No. 23-5 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-5 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-4 is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC No. 26-4 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC No. 30-4 is promulgated for use in the resale of a residential condominium unit Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-1 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form TREC Form No. 36-3 [~~36-2~~] is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-1 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 38-1 is promulgated for use as a notice of termination of contract. Standard Contract Form TREC Form No. 39-4 is promulgated for use as an amendment to promulgated forms of contracts. TREC Form No. 40-1 [~~40-0~~] is promulgated for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. TREC Form No. 41-0 is promulgated for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan. TREC Form No. 42-0 is promulgated for use as a notice that buyer cannot obtain financing pursuant to the Third Party Financing Condition Addendum.

(b)-(j) (No change.)

*§537.22. Standard Contract Form TREC No. 11-5 [~~11-4~~].*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 11-5 [~~11-4~~] approved by the Texas Real Estate Commission in 2004 [~~2001~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

*§537.43. Standard Contract Form TREC No. 36-3 [~~36-2~~].*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-3 [~~36-2~~] approved by the Texas Real Estate Commission in 2004 [~~2003~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

*§537.47. Standard Contract Form TREC No. 40-1 [~~40-0~~].*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 40-1 [~~40-0~~] approved by the Texas Real Estate Commission in 2004 [~~2001~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

*§537.49. Standard Contract Form TREC No. 42-0.*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 42-0 approved by the Texas Real Estate Commission in 2004. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

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 October 20, 2003.

TRD-200306919
Loretta DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 465-3900

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# TITLE 28. INSURANCE

## PART 1. TEXAS DEPARTMENT OF INSURANCE

### CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

### SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

**28 TAC §7.66**

*(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 Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Insurance proposes the repeal of §7.66 concerning the 1996 annual and 1997 quarterly statements, other reporting forms, and diskettes necessary to report information concerning the financial condition and business operations and activities of insurers and other entities regulated by the department. The section is proposed for repeal to facilitate the proposal of a new §7.66 concerning 2003 annual and quarterly statement blanks, other reporting forms, electronic data filings with the National Association of Insurance Commissioners via the Internet and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities during the 2003 calendar year. The department is proposing the new §7.66 which appears elsewhere in this issue of the *Texas Register*.

Betty Patterson, Senior Associate Commissioner, Financial Program has determined that, for the first five years the repeal of the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or local economy as result of the proposal.

Ms. Patterson also has determined that, for each year of the first five years the repeal of the section will be in effect, the public benefit anticipated as a result of the repeal of the section will be the elimination of obsolete regulations. There will be no economic cost to persons who are required to comply with the repeal as proposed.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 1, 2003 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The repeal of the section is proposed under the Insurance Code §§802.001-802.003 and 802.051-802.056 (formerly Article 1.11) and 36.001. Sections 802.001-802.003 and 802.051-802.056 authorize the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following articles and sections of the Insurance Code will be affected by this proposed section: articles 3.77, 9.22, 9.47, 21.39 and 21.54, §§32.041, 802.001-802.003, 802.051-802.056, 841.255, 842.003, 842.052, 842.101, 842.201, 842.202, 842.253, 843.151, 843.155, 844.001-844.005, 844.051-844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.001, 883.002, 883.204, 883.205, 884.256, 885.311, 885.401, 885.403-885.406, 885.414, 887.004, 887.009, 887.060, 887.064, 887.303, 887.401-887.407, 911.001, 911.101, 911.304, 912.001, 912.002, 912.059, 912.151, 912.152, 912.154, 912.156, 912.157, 912.201-912.203, 912.251-912.253, 912.301, 912.305, 912.306, 912.751-912.753, 912.801-912.804, 941.252, 942.201, 942.202, 961.002, 961.003, 961.052, 961.101, 961.202, 961.205, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110-982.112, 982.251-982.255, 982.302-982.306, 984.001, 984.002, 984.051, 984.052, 984.101-984.103, 984.151-984.153, and 984.201-984.204.

*§7.66. Requirements for Filing the 1996 Annual and 1997 Quarterly Statements, Other Reporting Forms, and Diskettes.*

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 October 15, 2003.

TRD-200306818
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 463-6327

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**28 TAC §7.66**

The Texas Department of Insurance proposes new §7.66 concerning 2003 annual and quarterly statement blanks, other reporting forms, electronic data filings with the National Association of Insurance Commissioners (NAIC) and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities during the 2003 calendar year. The information provided by the completion of the forms is necessary to allow the department to monitor the solvency, business activities and statutory compliance of the insurers and other entities regulated by the department. The new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; and proposes to adopt by reference the NAIC 2003 annual and 2003 quarterly statement blanks, other reporting forms and instructions for reporting the financial condition and business operations and activities; and requires insurance companies and certain other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the NAIC as directed. Subsection (a) explains the purpose of the section and adopts by reference the forms described in the section. Subsection (b) defines terms used in the section. Subsection (c) describes the hierarchy of laws in the event of a conflict between the Insurance Code, this section and other regulations. Subsections (d)-(l) describe the forms, instructions and filing requirements for the various types of insurers and other regulated entities. Subsection (m) provides the department may request financial reports other than those specified in this section. Copies of the forms and instructions are available for inspection in the office of the Financial Analysis and Examinations Activity of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, 333 Guadalupe, Building 3, Third Floor, Austin, Texas. The new section will replace existing §7.66 which concerned the adoption of the 1996 annual and 1997 quarterly statement filings and is proposed for repeal elsewhere in this issue of the Texas Register.

Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that, for the first five years the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on local employment or the local economy as a result of the proposal.

Ms. Patterson has also determined that, for each year of the first five years the section is in effect, the public benefits anticipated as a result of enforcing this section are the ability of the department to provide financial information to the public and other regulatory bodies as requested, and to monitor the financial condition of insurers and other regulated entities licensed in Texas to better assure financial solvency. The probable economic cost to persons required to comply with the section depends on several factors. Generally insurers and other regulated entities are required by statute to provide the department with annual reports on their operations. Insurance Code, §802.055 provides that an insurance company shall pay all costs of preparing and furnishing to the NAIC the information required under Insurance Code, §802.052, including any related filing fees. The fees associated with each company to file electronically with the NAIC database can range from $260 to $65,000 depending on the amount of premiums written, with a limit for insurer groups of $195,000. To that extent, the cost of preparing and filing the annual statement is attributable to statute and not the section. Additionally, the reports and forms generally request information that is already captured or created by the insurer or other regulated entity as necessary to its business operations, therefore the only cost involved is the transfer of that information from the company's records to the report or form. The range of cost of software to prepare the financial statements is approximately $350 to $600. The cost of software may be greater or less depending on the amount charged by the vendor and any extra services that are agreed to between the company and the vendor. Such estimated cost may be lower based upon factors such as the type of company (e.g. life, accident and health, or property and casualty); the size of the company (e.g. large or small); and the type of business written by a company. The department assumes that micro, small and large businesses will utilize employees who are familiar with the records of the insurer or health maintenance organization and accounting practices in general. Such individuals are compensated from $17 to $30 per hour based on the department's experience. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between micro, small and larger businesses affected by this section. The department finds it neither legal nor feasible to reduce the effect of the proposed section on micro or small insurers subject to the section since the information required by the forms is necessary to effectively regulate and monitor the activities of insurers and other regulated entities licensed in Texas, regardless of their size.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 1, 2003, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P. O. Box 149099, Austin, Texas 78714-9099. A request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk.

The new section is proposed under the Insurance Code §§802.001-802.003 and 802.051-802.056 (formerly article 1.11), which authorize the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and require certain insurers to make filings with the National Association of Insurance Commissioners; articles 3.77, 9.22, 9.47, 21.49, 21.54, and §§841.225 (formerly article 3.07), 842.003, 842.052, 842.101, 842.201, 842.202, 842.253 (formerly article 20.02), 843.151 (formerly article 20A.22), 843.155 (formerly article 20A.10), 861.254, 861.255 (formerly articles 8.07, 8.08, 8.21), 862.001, 862.003 (formerly articles 6.11, 6.12), 882.001 (formerly article 11.19), 882.003 (formerly article 11.06), 883.001, 883.002, 883.204, 883.205 (formerly article 15.15), 883.002 (formerly article 15.16), 884.256 (formerly article 22.06), 885.311, 885.401, 885.403-885.406, 885.414 (formerly

article 10.30), 887.004, 887.009 (formerly article 14.39), 887.060, 887.064, 887.303, 887.401-887.407 (formerly article 14.15), 911.001, 911.101 (formerly article 16.24), 911.304 (formerly article 16.18), 912.002 (formerly article 17.22), 912.001, 912.059, 912.151, 912.152, 912.154, 912.156, 912.157, 912.201-912.203, 912.251-912.253, 912.301, 912.305, 912.306, 912.751-912.753, 912.801-912.804 (formerly article 17.25), 941.252 (formerly article 18.12), 942.201, 942.202 (formerly article 19.08), 961.002 (formerly article 23.26), 961.003, 961.052, 961.101, 961.202, 961.205 (formerly article 23.02), 982.004, 982.251-982.254 (formerly article 3.27-2), 982.004, 982.101, 982.103 (formerly article 3.20-1), 984.001, 984.002, 984.051, 984.052, 984.101-984.103, 984.151-984.153, 984.201-984.204 (formerly article 8.24), which require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rulemaking authority of the commissioner relating to those insurers and other regulated entities; 982.001, 982.002, 982.004, 982.052, 982.102-982.104, 982.106, 982.108, 982.110-982.112, 982.201-982.204, 982.251-982.255, 982.302-982.306 (formerly article 21.43), which provide the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code; 844.001-844.005, 844.051-844.054, 844.101 (formerly article 21.52F), which authorize the commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under Insurance Code, Title 2, Chapter 844; Article 21.39, which requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance; §32.041 which requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements; and §36.001 which provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following articles and sections of the Insurance Code will be affected by this proposed section: articles 3.77, 9.22, 9.47, 21.39 and 21.54, §§32.041, 802.001-802.003, 802.051-802.056, 841.255, 842.003, 842.052, 842.101, 842.201, 842.202, 842.253, 843.151, 843.155, 844.001-844.005, 844.051-844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.001, 883.002, 883.204, 883.205, 884.256, 885.311, 885.401, 885.403-885.406, 885.414, 887.004, 887.009, 887.060, 887.064, 887.303, 887.401-887.407, 911.001, 911.101, 911.304, 912.001, 912.002, 912.059, 912.151, 912.152, 912.154, 912.156, 912.157, 912.201-912.203, 912.251-912.253, 912.301, 912.305, 912.306, 912.751-912.753, 912.801-912.804, 941.252, 942.201, 942.202, 961.002, 961.003, 961.052, 961.101, 961.202, 961.205, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110-982.112, 982.251-982.255, 982.302-982.306, 984.001, 984.002, 984.051, 984.052, 984.101-984.103, 984.151-984.153, and 984.201-984.204.

*§7.66. Requirements for Filing the 2003 NAIC Quarterly and 2003 NAIC Annual Statements, Other Reporting Forms, and Electronic Data Filings with the NAIC.*

(a) Scope. This section provides insurers and other regulated entities with the requirements for the 2003 quarterly statements, 2003 annual statement, other reporting forms, and electronic data filings with the National Association of Insurance Commissioners (NAIC) necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; U.S. Branch of an alien insurer; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; statewide mutual assessment companies; local mutual aid associations; mutual burial associations; exempt associations; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Mutual Insurance Company (successor to the Texas Workers' Compensation Insurance Fund); and the Texas Windstorm Insurance Association. The commissioner adopts by reference, the 2003 NAIC quarterly statement blanks, the 2003 NAIC annual statement blanks, the related instruction manuals, and other supplemental reporting forms specified in this section. The NAIC annual and quarterly statement blanks and other NAIC supplemental reporting forms can be produced as part of the software available from vendors and the Texas-only forms are available from the Texas Department of Insurance, Financial Analysis and Examinations Activity, Mail Code 303-1A, P. O. Box 149099, Austin, Texas 78714-9099. Insurers and other regulated entities shall properly report to the department and the NAIC by completing the appropriate annual and quarterly statement blanks, prepared with laser quality print (hand written copies must be prepared legibly using black ink), other reporting forms, and electronic data filings with the NAIC following the applicable specifications.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings:

(1) Commissioner - The commissioner of insurance appointed under the Texas Insurance Code.

(2) Department - The Texas Department of Insurance.

(3) Texas edition - Blanks and forms promulgated by the commissioner.

(c) Conflicts with other laws. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, then and in that event, the Insurance Code, the department's promulgated rule, form, instruction, or the specific requirement of subsections of this section shall take precedence and in all respects control.

(d) Filing requirements for life, accident and health insurers. Each life, life and accident, life and health, accident, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, group hospital service corporation and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, or electronic data filings as directed in this subsection. This subsection does not apply to entities licensed as health maintenance organizations under Insurance Code Chapter 843. Insurers described in this subsection and engaged in business authorized under insurance code Chapter 843 may have additional reporting requirements under subsection (h) of this section. Insurers described under this subsection that wrote direct health premiums for the calendar year ending December 31, 2002 may elect to file on the

NAIC Health statement blank for the three quarters of 2003 and the calendar year 2003 if the insurer wrote 100% of "health premiums" as the lines of business defined in the 2003 NAIC Health Annual Statement Instructions. If a reporting entity qualifies under this subsection to use the health annual statement, it must continue to use that annual statement for a minimum of three years or obtain written approval from the department to change to another type of annual statement. Insurers filing the NAIC Life, Accident and Health blank and the related NAIC supplemental forms and reports identified in these subsections shall complete filings in accordance with the 2003 NAIC Annual Statement Instructions, Life, Accident and Health. Life insurers meeting the test set forth in this subsection to file the NAIC Health blank and the related NAIC supplemental forms and reports identified in these subsections shall complete filings in accordance with the 2003 NAIC Health Annual Statement Instructions. The electronic filings of these forms or reports with the NAIC shall be in accordance with the NAIC data specifications and instructions for electronic filing and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2003 NAIC Life, Accident and Health Annual Statement due on or before March 1, 2004 (stipulated premium insurance companies, April 1, 2004);

(B) 2003 NAIC Life, Accident and Health Annual Statement of the Separate Accounts for the 2003 calendar year (required of companies maintaining separate accounts), due on or before March 1, 2004 ;

(C) 2003 NAIC Life, Accident and Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2003. However, a Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly statements with the department or the NAIC if it meets all three of the following conditions:

*(i)* it is authorized to write only life insurance on its certificate of authority;

*(ii)* it collected premiums in the prior calendar year of less than $1 million; and

*(iii)* it had a profit from operations in the prior two calendar years.

(D) 2003 Health Annual Statement, due on or before March 1, 2004 if the company qualifies as described in this subsection;

(E) 2003 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2003 if the company qualifies as described in this subsection;

(F) Management's Discussion and Analysis, due on or before April 1, 2004; and

(G) Statement of Actuarial Opinion, due on or before March 1, 2004, and in accordance with paragraph (4) of this subsection;

(2) Domestic insurer reports and forms to be filed in paper copy only with the department:

(A) Schedule SIS, Stockholder Information Supplement due on or before March 1, 2004. This filing is also required if filing a Health Annual Statement, as applicable;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2004 (stipulated premium companies, April 1, 2004). This filing is also required if filing a Health Annual Statement, as applicable;

(C) The Texas Health Insurance Risk Pool shall file the 2003 NAIC Life, Accident and Health Annual and 2003 NAIC Quarterly Statements as follows:

*(i)* 2003 NAIC Life, Accident and Health Annual Statement , with only pages 1 - 5, the Notes to Financial Statements on page 19 and Schedule E Part 1 on page E24 to be completed and filed on or before March 1, 2004.; and

*(ii)* 2003 NAIC Life, Accident and Health Quarterly Statement, with only pages 1-5, the notes on page 7 and Schedule E on page E08 to be completed and filed on or before May 15, August 15, and November 15, 2003.

*(iii)* The Texas Health Insurance Risk Pool is not required to file any reports, diskettes, or electronic data filings with the NAIC.

(D) Texas Overhead Assessment Form (Texas edition), due on or before March 1, 2004 (stipulated premium insurance companies, April 1, 2004);

(E) Statement on non-guaranteed elements-Exhibit 5 Interrogatory #3.2, due on or before March 1, 2004; and

(F) Analysis of Surplus (Texas Edition) for life, accident and health insurers, to be filed on or before March 1, 2004 (stipulated premium insurance companies, April 1, 2004).

(3) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) Affidavit of Filing and Financial Statement Attestation, to be filed with the department by foreign companies filing electronically with the NAIC and not filing paper copy with the department. The statement generally provides that the electronic NAIC filing is an exact and complete duplicate of the statement filed with the reporting entity's domestic state. This statement is due on the filing date for the quarterly or annual statement.

(B) Annual statement electronic filing, due on or before March 1, 2004 (stipulated premium insurance companies, April 1, 2004);

(C) Quarterly statement electronic filing, due on or before May 15, August 15, and November 15, 2003. A Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly electronic data filings with the NAIC if it meets all three of the following conditions:

*(i)* it is authorized to write only life insurance on its certificate of authority;

*(ii)* it collected premiums in the prior calendar year of less than $1 million; and

*(iii)* it had a profit from operations in the prior two calendar years;

(D) Accident and Health Policy Experience, due on or before April 1, 2004;

(E) Credit Insurance Experience Exhibit, due on or before April 1, 2004;

(F) Interest Sensitive Life Insurance Products Report, due on or before April 1, 2004;

(G) Investment Risk Interrogatories, due on or before April 1, 2004;

(H) Life, Health, & Annuity Guaranty Assessment Base Reconciliation Exhibit due on or before April 1, 2004;

(I) Life, Health, & Annuity Guaranty Assessment Base Reconciliation Exhibit Adjustment Form, due on or before April 1, 2004.

(J) Long Term Care Experience Reporting Forms, due on or before April 1, 2004;

(K) Long Term Care Experience Exhibit, due on or before March 1, 2004;

(L) Management Discussion & Analysis, due on or before April 1, 2004;

(M) Medicare Supplement Insurance Experience Exhibit, due on or before April 1, 2004;

(N) Risk based capital filing, as applicable, due on or before March 1, 2004;

(O) Statement of Actuarial Opinion, due on or before March 1, 2004;

(P) Trusteed Surplus Statement, due on or before May 15, August 15, November 15, 2003, and March 1, 2004; and

(Q) Workers' Compensation Carve-Out Supplement, due on or before March 1, 2004.

(4) Actuarial opinions required by paragraph (1)(G) of this subsection shall be in accordance with the following:

(A) Unless exempted, the statement of actuarial opinion, attached to either the Life, Accident and Health Annual Statement or the Health Annual Statement, should follow the applicable provisions of §§3.1601-3.1611 of this title (relating to Actuarial Opinion and Memorandum Regulation).

(B) For those companies exempted from §§3.1601-3.1611 of this title, instructions 1-12, established by the NAIC, must be followed.

(C) Any stipulated premium company subject to §§3.1601-3.1611 of this title which does not insure or assume risk on contracts with death benefits, cash value, or accumulation values on any one life in excess of $15,000, except as permitted by Insurance Code Article 22.13, §1(b), is exempt from submission of a statement of actuarial opinion in accordance with §3.1608 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis), but must submit an actuarial opinion pursuant to §3.1607 of this title (relating to Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis).

(D) Any company required by §3.4505(b)(3)(I) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) to opine on the application of X factors, shall attach this opinion to the Life, Accident and Health Annual Statement or the Health Annual Statement, as applicable.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for life, accident and health insurers with the application.

(7) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code, §823.004 shall file an Analysis of Surplus (Texas Edition) for life, accident and health insurers with the department.

(e) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, or U.S. Branch of an alien insurer, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed an NAIC property and casualty annual statement for the 2002 calendar year or had gross written premiums in 2003 in excess of $5,000,000, any Mexican non-life insurer licensed under any article of the Insurance Code other than, or in addition to, Insurance Code §984 (formerly article 8.24), domestic joint underwriting association, the Texas Mutual Insurance Company (successor to the Texas Workers' Compensation Insurance Fund) and the Texas Windstorm Insurance Association shall complete and file the following blanks, forms, and diskettes or electronic data filings as directed by this subsection. The forms and reports identified in this subsection shall be completed in accordance with the 2003 NAIC Annual Statement Instructions, Property and Casualty. The electronic filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing, as applicable. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2003 NAIC Property and Casualty Annual Statement , due on or before March 1, 2004;

(B) 2003 NAIC Property and Casualty Quarterly Statements , due on or before May 15, August 15, and November 15, 2003;

(C) 2003 NAIC Combined Property/Casualty Annual Statement , to be filed on or before May 1, 2004. This statement is required only for those affiliated insurers that wrote more than $35 million in direct premiums as a group in calendar year 2003, as disclosed in Schedule T of the Annual Statement(s);

(D) Management's Discussion and Analysis, due on or before April 1, 2004; and

(E) Statement of Actuarial Opinion due on or before March 1, 2004.

(2) Domestic insurer reports and forms to be filed in paper copy only with the department:

(A) Schedule SIS, Stockholder Information Supplement (required of domestic stock companies which have 100 or more stockholders), due on or before March 1, 2004;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2004;

(C) The Texas Windstorm Insurance Association (Insurance Code Article 21.49) shall complete and file only the following:

*(i)* 2003 NAIC Property and Casualty Annual Statement , to be filed on or before March 1, 2004;

*(ii)* Property and Casualty Quarterly Statement , to be filed on or before May 15, August 15, and November 15, 2003; and

*(iii)* Management's Discussion and Analysis, to be filed on or before April 1, 2004.

*(iv)* The Texas Windstorm Insurance Association is not required to file any reports with the NAIC.

(D) Texas Overhead Assessment Form (Texas edition), due on or before March 1, 2004;

(E) Supplement for County Mutuals (Texas edition) (required of Texas county mutual companies only), due with the 2003 annual statement on or before March 1, 2004;

(F) Texas Supplemental A for County Mutuals (Texas edition) (required of Texas county mutual companies only), due with the annual statement on or before March 1, 2004; and

(G) Analysis of Surplus (Texas Edition) for property and casualty insurers except Texas county mutual companies, to be filed on or before March 1, 2004.

(3) Electronic filings by domestic and foreign insurers filed with the NAIC:

(A) Affidavit of Filing and Financial Statement Attestation, to be filed with the department by foreign companies filing electronically with the NAIC and not filing paper copy with the department. The statement generally provides that the electronic NAIC filing is an exact and complete duplicate of the statement filed with the reporting entity's domestic state. This statement is due on the filing date for the quarterly or annual statement.

(B) Annual statement electronic filing, due on or before March 1, 2004;

(C) Quarterly statement electronic filing, due on or before May 15, August 15, and November 15, 2003;

(D) Accident and Health Policy Experience, due on or before April 1, 2004;

(E) Credit Insurance Experience Exhibit, due on or before April 1, 2004;

(F) Investment Risk Interrogatories, due on or before April 1, 2004;

(G) Financial Guaranty Insurance Exhibit, due on or before March 1, 2004;

(H) Insurance Expense Exhibit, due on or before April 1, 2004;

(I) Long Term Care Experience Reporting Forms, due on or before April 1, 2004;

(J) Management Discussion & Analysis, due on or before April 4, 2004;

(K) Medicare Supplement Insurance Expense Exhibit, due on or before March 1, 2004;

(L) Risk Based Capital filing, as applicable, due on or before March 1, 2004;

(M) Statement of Actuarial Opinion, due on or before March 1, 2004;

(N) Supplement A to Schedule T, due on or before March 1, May 15, November 15, 2003, and March 1, 2004;

(O) Trusteed Surplus Statement, due on or before May 15, August 15, November 15, 2003, and March 1, 2004; and

(P) Electronic format combined annual statement, due on or before May 1, 2004.

(4) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(5) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the application.

(6) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code, §823.004 shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the department

(f) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and electronic data filings for the 2003 calendar year and the three quarters for the 2003 calendar year. The forms and reports identified in this subsection shall be completed in accordance with the 2003 NAIC Annual Statement Instructions, Fraternal. The electronic data filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2003 NAIC Fraternal Annual Statement, due on or before March 1, 2004;

(B) 2003 NAIC Fraternal Annual Statement of the Separate Accounts (required of companies maintaining separate accounts), due on or before March 1, 2004;

(C) Management's Discussion and Analysis, due on or before April 1, 2004;

(D) Statement of Actuarial Opinion due on or before March 1, 2004, and

(E) Statement on non-guaranteed elements - Exhibit 5, interrogatory # 3, due on or before March 1, 2004;

(2) Domestic insurer paper copy reports and forms to be filed only with the department:

(A) Fraternal Quarterly financial statement, due on or before May 15, August 15, and November 15, 2003;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2004;

(C) Texas Overhead Assessment Form (Texas edition), due on or before March 1, 2004; and

(D) Analysis of Surplus (Texas Edition) for fraternal benefit societies to be filed on or before March 1, 2004.

(3) Domestic and foreign insurer reports and forms to be filed electronically only with the NAIC:

(A) Affidavit of filing and Financial Statement Attestation, to be filed with the department by foreign companies filing electronically with the NAIC and not filing paper copy with the department. The statement generally provides that the electronic NAIC filing is an exact and complete duplicate of the statement filed with the reporting entity's domestic state. This statement is due on the filing date for the annual statement.

(B) Annual statement electronic filing, to be filed on or before March 1, 2004;

(C) Accident and Health Policy Experience, due on or before April 1, 2004;

(D) Interest Sensitive Life Insurance Products Report, due on or before April 1, 2004;

(E) Investment Risk Interrogatories, due on or before April 1, 2004;

(F) Long Term Care Experience Reporting Forms, due on or before April 1, 2004;

(G) Long Term Care Experience Exhibit, due on or before March 1, 2004;

(H) Management Discussion & Analysis, due on or before April 1, 2004;

(I) Medicare Supplement Insurance Experience Exhibit, due on or before April 1, 2004;

(J) Statement of Actuarial Opinion, due on or before March 1, 2004;

(K) Supplement to Valuation Report due on or before June 30, 2004; and

(L) Trusteed Surplus Statement, due on or before May 15, August 15, November 15, 2003, and March 1, 2004.

(4) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(5) A foreign insurer that files with the department an application for a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for fraternal benefit societies with the application.

(6) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code, §823.004 shall file an Analysis of Surplus (Texas Edition) for fraternal benefit societies with the department.

(g) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 2003 calendar year and the three quarters of the 2003 calendar year. The reports and forms identified in this subsection shall be completed in accordance with the 2003 NAIC Annual Statement Instructions, Title. The electronic version of the filings with the NAIC identified in this subsection shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2003 NAIC Title Annual Statement, due on or before March 1, 2004;

(B) Management's Discussion and Analysis, due on or before April 1, 2004; and

(C) Statement of Actuarial Opinion due on or before March 1, 2004.

(2) Domestic insurer paper copy filings and reports to be filed only with the department:

(A) Title quarterly statement, due on or before May 15, August 15, and November 15, 2003;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2004;

(C) Schedule SIS, Stockholder Information Supplement due on or before March 1, 2004;

(D) Texas Overhead Assessment Form (Texas edition), due on or before March 1, 2004; and

(E) Analysis of Surplus (Texas Edition) for title companies, to be filed on or before March 1, 2004.

(3) Domestic and foreign insurer reports and forms to be filed electronically only with the NAIC:

(A) Affidavit of filing and Financial Statement Attestation, to be filed with the department by foreign companies filing electronically with the NAIC and not filing paper copy with the department. The statement generally provides that the electronic NAIC filing is an exact and complete duplicate of the statement filed with the reporting entity's domestic state. This statement is due on the filing date for the annual statement.

(B) Annual statement electronic filing, due on or before March 1, 2004;

(C) Investment Risk Interrogatories, due on or before April 1, 2004;

(D) Management Discussion and Analysis, due on or before April 1, 2004; and

(E) Statement of Actuarial Opinion due on or before March 1, 2004;

(4) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(5) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for title insurers with the application.

(6) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code, §823.004 shall file an Analysis of Surplus (Texas Edition) for title insurers.

(h) Requirements for health maintenance organizations. Each health maintenance organization licensed pursuant to Insurance Code Chapter 843 shall use the NAIC Health blank to file the 2003 annual and 2003 quarterly information. Insurers that are subject to life insurance statutes and are permitted or allowed to do the business of health maintenance organizations shall file the Texas HMO supplement form as part of their annual and quarterly filings. The NAIC forms and reports required in this subsection shall be completed in accordance with the 2003 NAIC Annual and Quarterly Statement Instructions, Health. The Texas supplemental forms required in this subsection and provided by the department shall be completed in accordance with the instructions on the forms. The actuarial opinion shall include the additional requirements of the department set forth in paragraph (1)(D) of this subsection. The electronic data filings with the NAIC shall be in accordance with NAIC data specifications and instructions and shall include PDF format filing. The Texas specific electronic filings regarding HMO data requested by the department shall be filed in accordance with the instructions provided by the department. The filings for insurers described in this subsection are as follows:

(1) Domestic and foreign insurer reports and forms in paper copy to be filed with the department and the NAIC:

(A) 2003 NAIC Health Annual Statement, due on or before March 1, 2004;

(B) 2003 NAIC Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2003. Along with each quarterly filing, include a completed copy of Schedule E- part 3- Special Deposits, from the 2003 NAIC Health Annual Statement blank;

(C) Management's Discussion and Analysis, to be filed on or before April 1, 2004; and

(D) Statement of Actuarial Opinion due on or before March 1, 2004. In addition to the requirements set forth in the 2003 NAIC Annual Statement Instructions, Health, the department requires that the actuarial opinion include the following:

*(i)* The statement of actuarial opinion must include assurance that an actuarial report and underlying actuarial work papers supporting the actuarial opinion will be maintained at the company and available for examination for seven years. The foregoing must be available by May 1 of the year following the year-end for which the opinion was rendered or within two weeks after a request from the commissioner. The suggested wording used will depend on whether the actuary is employed by the company or is a consulting actuary. The wording for an actuary employed by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion will be retained for a period of seven years in the administrative offices of the company and available for regulatory examination." The wording for a consulting actuary retained by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion have been provided to the company to be retained for a period of seven years in the administrative offices of the company and available for regulatory examination."

*(ii)* Under the scope paragraph requirements of section 5 of the instructions relating to the Actuarial Certification in the 2003 NAIC Annual Statement Instructions, Health, the department requires that the actuarial opinion specifically list the premium deficiency reserve as an item and disclose the amount of such reserve.

(2) Domestic insurer paper copy and Texas specific filings and reports to be filed with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2004;

(B) Texas HMO Supplement (Texas edition), due on or before May 15, August 15, and November 15, 2003, and March 1, 2004;

(C) Department formatted diskettes containing annual statement data (diskettes provided by the department), to be completed according to the instructions provided by the department, due on or before March 1, 2004;

(D) Department formatted diskettes containing quarterly statement data (diskettes provided by the department), to be completed according to the instructions provided by the department, due on or before May 15, August 15, and November 15, 2003; and

(E) Texas Overhead Assessment Form (Texas edition), due on or before March 1, 2004.

(3) Electronic filings by domestic and foreign insurers filed only with the NAIC.

(A) Annual statement electronic filing, due on or before March 1, 2004;

(B) Quarterly statement electronic filing, due on or before May 15, August 15, and November 15, 2003;

(C) Statement of Actuarial Certification, due on or before March 1, 2004;

(D) Investment risk interrogatories, due on or before April 1, 2004;

(E) Long-term Care Experience Reporting Forms, due on or before April 1, 2004;

(F) Management Discussion and Analysis due on or before April 1, 2004; and

(G) Medicare Supplement Insurance Experience Exhibit, due on or before March 1, 2004;

(i) Requirements for farm mutual insurers not subject to the provisions of subsection (e) of this section relating to filing requirements for property and casualty insurers shall file the following blanks and forms for the 2003 calendar year with the department only, on or before March 1, 2004:

(1) Annual statement (Texas edition);

(2) Texas Overhead Assessment Form (Texas edition); and

(3) Statement of Actuarial Opinion, unless otherwise exempted.

(j) Requirements for statewide mutual assessment associations, local mutual aid associations, mutual burial associations and exempt associations. Each statewide mutual assessment association, local mutual aid association, mutual burial association and exempt association shall complete and file the following blanks and forms for the 2003 calendar year with the department only, on or before April 1, 2004:

(1) Annual Statement (Texas Edition) (exempt companies are required to complete all pages except lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4 - 7);

(2) Texas Overhead Assessment Form (Texas edition);

(3) Release of Contributions Form (Texas edition);

(4) 3 1/2 % Chamberlain Reserve Table (Reserve Valuation) (Texas edition);

(5) Reserve Summary (1956 Chamberlain Table 3 1/2 %) (Texas edition);

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas edition); and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas edition).

(k) Requirements for Non-profit Legal Service Corporations. Each non-profit legal service corporation doing business as authorized by a certificate of authority issued under Chapter 961 (formerly Article 23) shall complete and file the following blanks and forms for the 2003 calendar year with the department only. An actuarial opinion is not required. The following forms are to be filed on or before March 1, 2004:

(1) Annual Statement (Texas edition); and

(2) Texas Overhead Assessment Form (Texas edition).

(l) Requirements for Mexican casualty companies. Each Mexican casualty company doing business as authorized by a certificate of authority issued under the Insurance Code Section 984 (formerly Article 8.24), shall complete and file the following blanks and forms for the 2003 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed in accordance with the 2003 NAIC Annual Statement Instructions, Property and Casualty, except as provided by this subsection. An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The following blanks or forms are to be filed on or before March 1, 2004:

(1) 2003 NAIC Annual Statement; provided, however, only pages 1 - 4, and 110 (Schedule T) are required to be completed;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English);

(3) A copy of the official documents issued by the COMISION NACIONAL DE SEGUROS Y FIANZAS approving the 2003 annual statement; and

(4) A copy of the current license to operate in the Republic of Mexico.

(m) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

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 October 15, 2003.

TRD-200306819
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 463-6327

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## CHAPTER 21. TRADE PRACTICES
## SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

**28 TAC §21.2802, §21.2803**

The Texas Department of Insurance (the department) proposes amendments to §21.2802 and §21.2803, concerning required data elements for non-electronic clean claims submitted to health maintenance organizations (HMOs) by dental providers. The proposed amendments are the result of Senate Bill (SB) 418, 78th Regular Session, which contained numerous provisions regarding the prompt payment of claims by HMOs, as well as preferred provider carriers. Among other things, SB 418 added new Texas Insurance Code §843.336(d) concerning the adoption of required data fields on HMO claim forms that must be completed by a physician or provider in order for a claim to be considered clean. The purpose of this proposal is to implement those provisions, as described more fully herein.

Pursuant to Insurance Code §843.336(d), on July 4, 2003, the department proposed rules implementing major portions of SB 418, including amendments to §21.2803 that listed required elements for non-electronic clean claims. Comments the department received on the proposed rules, as well as discussions with the Technical Advisory Committee on Claims Processing, indicated, among other things, that those rules did not reflect dental-specific requirements for clean claims submitted to HMOs. As a result, the department committed to work with interested parties to develop required data elements necessary to accommodate dental claims that are subject to SB 418, and this proposal is meant to achieve that purpose.

Section 21.2802(5) and (9) and §21.2803(g) are amended to reflect changes in references to subsections of §21.2803, which are being relettered. The proposed amendment adds new subsection (c) to §21.2803 which lists the information that must be included on a dental claim form. Because dental providers do not use, nor do HMOs require, one standard claim form when submitting a claim for dental services, the proposal does not prescribe a claim form or list the fields on which the information must be provided. In proposing the clean claim elements for dental claims, however, the department has referenced commonly-used American Dental Association claim forms, specifically the ADA-J515 and the ADA-J512. The proposal thus provides the standardization contemplated by SB 418, while allowing sufficient flexibility to accommodate the actual practice of dental providers and HMOs. Subsection (a) of §21.2803 was also amended to add language which reflects the addition of proposed new subsection (c). In addition, the proposal reletters existing §21.2803(c) - (g).

Kimberly Stokes, Senior Associate Commissioner for Life, Health and Licensing, has determined that for each year of the first five years the proposed amendments will be in effect there will be no fiscal impact to state and local governments as a result of the enforcement and administration of the amended rules. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of amended §21.2802 and §21.2803 will be more appropriate, dental-specific claims elements that will allow the more efficient processing of dental claims under SB 418. Any cost to persons required to comply with the amended sections for each of the first five years the proposed amendments will be in effect is the result of the enactment of SB 418 and not the result of the adoption, enforcement, or administration of the amended sections.

Ms. Stokes has determined that there is no adverse economic impact on entities that qualify as a small business or micro-business under Government Code §2006.001 as a result of the proposed amendments. In addition, it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses since §843.336(d) provides for more efficient processing and payment of all claims received by an HMO without regard for the size of the provider or HMO.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 1, 2003, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Senior Associate Commissioner, Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Insurance Code §36.001 and §843.336(d). Section 843.336(d) says the commissioner may adopt rules that specify the information that must be entered into the appropriate fields on the applicable claim form for a claim to be a clean claim. Section 36.001 of the Insurance Code provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Insurance Code §843.336(d)

*§21.2802. Definitions.*
The following words and terms when used in this subchapter shall have the following meanings:

(1) - (4) (No change.)

(5) Clean claim--

(A) For non-electronic claims, a claim submitted by a physician or provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy that includes:

*(i)* the required data elements set forth in §21.2803(b) or (c) of this title (relating to Elements of a Clean Claim); and

*(ii)* if applicable, the amount paid by the primary plan or other valid coverage pursuant to §21.2803(d) [~~§21.2803(c)~~] of this title (relating to Elements of a Clean Claim);

(B) For electronic claims, a claim submitted by a physician or provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy using the ASC X12N 837 format and in compliance with all applicable federal laws related to electronic health care claims, including applicable implementation guides, companion guides and trading partner agreements.

(6) - (8) (No change.)

(9) Deficient claim--A submitted claim that does not comply with the requirements of §21.2803(b), (c) or (e) [~~(d)~~] of this title.

(10) - (30) (No change.)

*§21.2803. Elements of a Clean Claim.*

(a) Filing a Clean Claim. A physician or provider submits a clean claim by providing to an HMO, preferred provider carrier, or any other entity designated for receipt of claims pursuant to §21.2811 of this title (related to Disclosure of Processing Procedures):

(1) for non-electronic claims, the required data elements specified in subsection (b) of this section, or for non-electronic dental claims filed with an HMO, the required data elements specified in subsection (c) of this section;

(2) for electronic claims and for electronic dental claims filed with an HMO, the required data elements specified in subsections (e) and (f) [~~(d) and (e)~~] of this subsection; and

(3) if applicable, any coordination of benefits or non-duplication of benefits information pursuant to subsection (d) [~~(c)~~] of this section.

(b) (No change.)

(c) Required data elements-dental claims. The data elements described in this subsection are required as indicated and must be completed or provided in accordance with the special instructions applicable to the data element for non-electronic clean claims filed by dental providers with HMOs.

(1) Patient's name is required;

(2) Patient's address is required;

(3) Patient's date of birth is required;

(4) Patient's gender is required;

(5) Patient's relationship to subscriber is required;

(6) Subscriber's name is required, if shown on the patient's ID card;

(7) Subscriber's address is required, but provider may enter "same" if the subscriber's address is the same as the patient's address required by paragraph (2) of this subsection;

(8) Subscriber's date of birth is required, if shown on the patient's ID card;

(9) Subscriber's gender is required;

(10) Subscriber's identification number is required, if shown on the patient's ID card;

(11) Subscriber's plan/group number is required, if shown on the patient's ID card;

(12) HMO's name is required;

(13) HMO's address is required;

(14) Disclosure of any other plan providing dental benefits is required and shall include a "no" if the patient is not covered by another plan providing dental benefits. If the patient does have other coverage, the provider shall indicate "yes" and the elements in paragraphs (15) - (20) of this subsection are required unless the provider submits with the claim documented proof to the HMO that the provider has made a good faith but unsuccessful attempt to obtain from the enrollee any of the information needed to complete the data elements;

(15) Other insured's or enrollee's name is required in accordance with the response to and requirements of the element in paragraph (14) of this subsection;

(16) Other insured's or enrollee's date of birth is required in accordance with the response to and requirements of the element in paragraph (15) of this subsection;

(17) Other insured's or enrollee's gender is required in accordance with the response to and requirements of the element in paragraph (15) of this subsection;

(18) Other insured's or enrollee's identification number is required in accordance with the response to and requirements of the element in paragraph (15) of this subsection;

(19) Patient's relationship to other insured or enrollee is required in accordance with the response to and requirements of the element in paragraph (15) of this subsection;

(20) Name of other HMO or insurer is required in accordance with the response to and requirements of the element in paragraph (15) of this subsection;

(21) Verification or preauthorization number is required, if a verification or preauthorization number was issued by an HMO to the provider;

(22) Date(s) of service(s) or procedure(s) is required;

(23) Area of oral cavity is required, if applicable;

(24) Tooth system is required, if applicable;

(25) Tooth number(s) or letter(s) are required, if applicable;

(26) Tooth surface is required, if applicable;

(27) Procedure code for each service is required;

(28) Description of procedure for each service is required, if applicable;

(29) Charge for each listed service is required;

(30) Total charge for the claim is required;

(31) Missing teeth information is required, if a prosthesis constitutes part of the claim. A provider that provides information for this element shall include the tooth number(s) or letter(s) of the missing teeth;

(32) Notification whether the services were for orthodontic treatment is required. If the services were for orthodontic treatment, the elements in paragraphs (34) and (35) of this subsection are required;

(33) Date of orthodontic appliance placement is required, if applicable;

(34) Months of orthodontic treatment remaining is required, if applicable;

(35) Notification of placement of prosthesis is required, if applicable. If the services included placement of a prosthesis, the element in paragraph (36) of this subsection is required;

(36) Date of prior prosthesis placement is required, if applicable;

(37) Name of billing provider is required;

(38) Address of billing provider is required;

(39) Billing provider's provider identification number is required, if applicable;

(40) Billing provider's license number is required;

(41) Billing provider's social security number or federal tax identification number is required;

(42) Billing provider's telephone number is required; and

(43) Treating provider's name and license number are required if the treating provider is not the billing provider.

(d) [~~(c)~~] Coordination of benefits or non-duplication of benefits. If a claim is submitted for covered services or benefits in which coordination of benefits pursuant to §§3.3501 - 3.3511 of this title (relating to Group Coordination of Benefits) and §11.511(1) of this title (relating to Optional Provisions) is necessary, the amount paid as a covered claim by the primary plan is a required element of a clean claim for purposes of the secondary plan's processing of the claim and CMS 1500, field 29 or UB-92, field 54 must be completed pursuant to subsection (b)(1)(II) and (b)(2)(GG) of this section. If a claim is submitted for covered services or benefits in which non-duplication of benefits pursuant to §3.3053 of this title (relating to Non-duplication of Benefits Provision) is an issue, the amounts paid as a covered claim by all other valid coverage is a required element of a clean claim and CMS 1500, field 29 or UB-92, field 54 must be completed pursuant to subsection (b)(1)(II) and (b)(2)(GG) of this section. If a claim is submitted for covered services or benefits and the policy contains a variable deductible provision as set forth in §3.3074(a)(4) of this title (relating to Minimum Standards for Major Medical Expense Coverage) the amount paid as a covered claim by all other health insurance coverages, except for amounts paid by individually underwritten and issued hospital confinement indemnity, specified disease, or limited benefit plans of coverage, is a required element of a clean claim and CMS 1500, field 29 or UB-92, field 54 must be completed pursuant to subsection (b)(1)(II) and (b)(2)(GG) of this section. Notwithstanding these requirements, an HMO or preferred provider carrier may not require a physician or provider to investigate coordination of other health benefit plan coverage.

(e) [~~(d)~~] A physician or provider submits an electronic clean claim by submitting a claim using the applicable format that complies with all applicable federal laws related to electronic health care claims, including applicable implementation guides, companion guides and trading partner agreements.

(f) [~~(e)~~] If a physician or provider submits an electronic clean claim that requires coordination of benefits pursuant to §§3.3501 - 3.3511 of this title (relating to Group Coordination of Benefits) or §11.511(1) of this title (relating to Optional Provisions), the HMO or preferred provider carrier processing the claim as a secondary payor shall rely on the primary payor information submitted on the claim by the physician or provider. The primary payor may submit primary payor information electronically to the secondary payor using the ASC X12N 837 format and in compliance with federal laws related to electronic health care claims, including applicable implementation guides, companion guides and trading partner agreements.

(g) [~~(f)~~] Format of elements. The elements of a clean claim set forth in subsections (b), (c), (d), (e) and (f) [~~and (e)~~], if applicable, of this section must be complete, legible and accurate.

(h) [~~(g)~~] Additional data elements or information. The submission of data elements or information on or with a claim form by a physician or provider in addition to those required for a clean claim under this section shall not render such claim deficient.

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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**28 TAC §21.2820**

The Texas Department of Insurance (the department) proposes new §21.2820 concerning identification (ID) cards issued by health maintenance organizations (HMOs) or insurers who issue preferred provider benefit plans. The new section is the result of Senate Bill (SB) 418, 78th Regular Legislative Session, which contained numerous provisions regarding the prompt payment of claims by HMOs and preferred provider carriers (hereinafter collectively "carriers"). Among other things, SB 418 added new Texas Insurance Code Art. 3.70-3C, Sec. 11, and §843.209 regarding carrier ID cards. As allowed by SB 418, the department adopted §21.2820 on an emergency basis effective August 16, 2003, which was the date that certain provisions of SB 418 went into effect. That emergency section is still in effect but will be withdrawn at the time this proposal, after notice and comment, is adopted.

Article 3.70-3C, Sec. 11, and §843.209 basically contain provisions concerning ID cards issued by carriers regulated under the Insurance Code and subject to the provisions of SB 418. These provisions state that carriers that issue ID cards must display certain information on the cards, including the date the insured or enrollee first became enrolled or a toll-free number a physician and provider may use to get that information. The proposed section accordingly requires carriers to display the first date of coverage or, in the alternative, to give a toll-free number and to make clear to the provider, by a statement or other indication,

that the number may be used to obtain this information. Because these provisions only apply to carriers and health plans subject to SB 418, they also contemplate that such cards identify applicability of the statute. Therefore, the proposal also requires that the letters "TDI" or "DOI" be prominently displayed on the front of the card. Finally, the proposal states that the requirements of the section apply to any HMO evidence of coverage or preferred provider benefit plan issued or renewed on or after January 1, 2004. The department believes that the proposal implements the ID card provisions of SB 418 consistent with the law's intent that the cards be as uniform and useful as possible for enrollees, insureds, carriers, and physicians and providers.

The department has discussed the provisions of this proposal with the Technical Advisory Committee on Claims Processing (TACCP) appointed by the commissioner of insurance pursuant to SB 418, and has drafted the proposal after receiving comments from members of the TACCP. In particular, because some carriers expressed concern that numerous states would impose the requirement that ID cards identify state-regulated health plans, the proposal allows carriers to choose to use the less Texas-specific term "DOI" (for "Department of Insurance") to alleviate those concerns. It should be noted that the proposed sections do not require carriers to issue ID cards, but rather prescribe the limited information that must be included where the carrier has made the decision to issue ID cards. Carriers are free to make this determination, as well as to include other information that may be of use in processing verification requests or claims. See, for example, adopted §§19.1724(d)(2), (4), and (10); 21.2803(b)(2)(KK). In addition, because a slightly different emergency rule has been in effect since August 16, 2003 (requiring that ID cards contain a symbol consisting of a star containing the letters "TDI"), any plans that have already printed cards containing the symbol as required by the emergency rule will be deemed to be in compliance with the final rule adopted by the department.

Kimberly Stokes, Senior Associate Commissioner for Life, Health and Licensing, has determined that for each year of the first five years the proposed section will be in effect there will be no fiscal impact to state and local governments as a result of the enforcement and administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of proposed §21.2820 will be the provision of, or access to, information concerning first date of coverage, which will assist carriers, physicians and providers, and enrollees and insureds with determinations regarding coverage for pre-existing conditions. The proposal also provides greater clarity for physicians and providers as to which patients' health plans are subject to the requirements and protections of SB 418. That section will also benefit insureds and enrollees by informing them as to whether their plan is regulated by the department and subject to the provisions relating to prompt payment of claims. Any cost to persons required to comply with this section for each of the first five years the proposed amendments will be in effect is the result of the enactment of SB 418 and not the result of the adoption, enforcement, or administration of the sections; however, because the department discussed compliance costs with several carriers, and because the issue was also discussed by participants at TACCP meetings, the following cost information is provided. According to TACCP participants, the cost for carriers to print new ID cards ranges from $.47 to $1.00 per card, depending upon whether the printing is done by an outside vendor or by the carrier in-house. The lower cost could increase when distribution is factored in, while the higher cost includes the cost of distribution. In addition, one carrier estimated the cost at $3.00 per card, when reprogramming costs were added to the costs of printing and distribution. Although the cost per card could be higher for carriers that meet the definition of small or micro-businesses, depending upon which means they used to print the cards, the department does not believe it would be legal or feasible to waive or reduce the requirements of the proposed rule for these carriers, for the following reasons. First, the department has already attempted to mitigate potential costs and administrative changes associated with printing new cards by making this provision applicable to plans and evidences of coverage issued or renewed on or after January 1, 2004. This provision was contained in the emergency rules and has been in effect since August 16, 2003. Second, in response to some carriers' contention that the star symbol requirement in the emergency rules would increase costs, the proposal allows for use of the less costly letters "TDI" or "DOI." Finally, establishing separate requirements or exempting small or micro-businesses from the rule would unfairly deprive that entity's insureds, enrollees, physicians, and providers of the benefits of SB 418 concerning ID cards.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 1, 2003, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Senior Associate Commissioner, Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The new rule is proposed under the Texas Insurance Code Article 3.70-3C, Sec. 11, and §§36.001 and 843.209. Article 3.70-3C, Sec. 11, and §843.209 contain provisions concerning ID cards issued by carriers regulated under the Insurance Code and subject to the provisions of SB 418. Section 36.001 of the Insurance Code provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Art. 3.70-3C, Sec. 11, and §843.209

*§21.2820. Identification Cards.*

(a) An identification card, or other similar document that includes information necessary to allow enrollees and insureds to access services or coverage under an HMO evidence of coverage or a preferred provider benefit plan, that is issued by an HMO or preferred provider carrier subject to this subchapter pursuant to §21.2801 of this title (relating to Scope) shall comply with the requirements of this section.

(b) An identification card or other similar document issued to enrollees or insureds shall include the following information:

(1) the name of the enrollee or insured;

(2) the first date on which the enrollee or insured became eligible for benefits under the plan or a toll-free number and a statement or other indication that a preferred provider may obtain such information by calling the toll-free number; and

(3) the letters "TDI" or "DOI" prominently displayed on the front of the card.

(c) The requirements of this section apply to an HMO evidence of coverage or a preferred provider benefit plan issued or renewed on or after January 1, 2004.

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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**28 TAC §21.2826**

The Texas Department of Insurance (the department) proposes new §21.2826, concerning waiver of statutory provisions as to Medicaid and Children's Health Insurance Program (CHIP) plans. The new section is the result of Senate Bill (SB) 418, 78th Regular Legislative Session, which contained numerous provisions regarding the prompt payment of claims by HMOs and preferred provider carriers (hereinafter collectively "carriers"). Among other things, SB 418 added new Article 21.30 concerning waiver of requirements for certain programs administered by the Health and Human Services Commission. The purpose of this proposal is to implement this provision, as described more fully herein.

As allowed by SB 418, the department adopted §21.2826 on an emergency basis effective August 16, 2003, which was the date that certain provisions of SB 418 went into effect. The emergency section is still in effect but will be withdrawn at the time this proposal, after notice and comment, is adopted.

Article 21.30 allows the commissioner of insurance, in consultation with the Commissioner of the Health and Human Services Commission, to determine whether certain provisions of Article 3.70-3C and the HMO Act, Chapter 843, will cause a negative fiscal impact to the state with respect to providing benefits or services under the Medicaid and CHIP plans and, if so, to waive application of those provisions. Based upon a request from the Commissioner of the Health and Human Services Commission, proposed §21.2826 states that certain stated provisions of the statute and rules do not apply to Medicaid and CHIP plans provided by a carrier to persons enrolled in those programs.

Kimberly Stokes, Senior Associate Commissioner for Life, Health and Licensing, has determined that for each year of the first five years the proposed section will be in effect there will be no fiscal impact to state and local governments as a result of the enforcement and administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of proposed §21.2826 will be lower costs of coverage and administration to the Medicaid and CHIP plans which, absent the waiver, could result in higher costs of providing program services, as well as higher administrative costs for the state, according to the Texas Health and Human Services Commission. Any potential cost to persons required to comply with this section for each of the first five years the proposed section will be in effect is the result of the enactment of SB 418 and not the result of the adoption, enforcement, or administration of the section. Ms. Stokes has also determined that there is no adverse economic impact on entities affected by the rule that qualify as a small business or micro-business under Government Code §2006.001 as a result of the proposed section. In addition, it is neither legal nor feasible to waive the provisions of the proposed section for small or micro businesses since Article 21.30 applies to all Medicaid and CHIP plans regardless of the size of the carrier providing the plan.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 1, 2003, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Senior Associate Commissioner, Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The new section is proposed under the Insurance Code Article 21.30, and §36.001. Article 21.30 allows the commissioner of insurance, under the circumstances stated therein, to waive application of certain provisions of SB 418 as to the Medicaid or CHIP plans. Section 36.001 of the Insurance Code provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following article is affected by this proposal: Insurance Code Article 21.30

*§21.2826. Waiver.*

The provisions of Texas Insurance Code Articles 3.70-3C, Sections 3A, 3C-3J, 10-12; and 21.52Z; Chapter 843, Subchapter J and §843.209 and §843.319; as well as this subchapter and §§3.3703(20), 11.901(10), 19.1723, and 19.1724 of this title (relating to Contracting Requirements, Required Provisions, Preauthorization and Verification, respectively) are not applicable to Medicaid and Children's Health Insurance Program (CHIP) plans provided by an HMO or preferred provider carrier to persons enrolled in the medical assistance program established under Chapter 32, Human Resources Code, or the child health plan established under Chapter 62, Health and Safety 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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## CHAPTER 34. STATE FIRE MARSHAL
## SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

**28 TAC §§34.808, 34.809, 34.811, 34.813, 34.814, 34.826**

The Texas Department of Insurance proposes amendments to §§34.808, 34.809, 34.811, 34.813, 34.814 and 34.826 concerning the storage and sale of fireworks. The proposal is necessary to implement legislation enacted by the 78th Legislature in Senate Bill (SB) 693. SB 693 amends Chapter 2154, Occupations Code, by incorporating National Fire Protection Association (NFPA) standards that set forth standards and procedures to be applied to the use of flame effects and pyrotechnics. The proposed amendment to §34.808 adds a definition of flame effects operator to mean one who has shown the skill and ability to safely assemble, conduct, or supervise flame effects in accordance with §2154.253, Occupations Code. The proposed amendment to §34.809 requires that a flame effects operator be licensed by the state fire marshal. The title and content of §34.811 are proposed to be amended to add flame effects operator to the list of license applicants who are required to take a written examination and any other tests or demonstrations deemed necessary by the state fire marshal. The proposed amendment to §34.813 states that when an application for a permit to use flame effects or pyrotechnics is required by §2154.253, Occupations Code, the application must be on a form provided by the state fire marshal and include the specified information required by NFPA 160 and 1126. The proposed amendment to §34.814 sets forth the fees associated with a flame effects operator license including initial fee, renewal fee, initial examination fee and reexamination fee. This section also includes fees associated with expired flame effects operator licenses. The proposed amendments to the title of §34.826 clarify that the section addresses pyrotechnic displays and includes flame effects. The proposed amendment to §34.826(b) contains grammatical changes and states that licensed operators and assistants must not be under the influence of or consume alcoholic beverages or controlled substances during public displays. The proposed new §34.826(h) sets forth criteria for preparing and conducting flame effects and states that the use of flame effects before an assembly of fifty people or more must be conducted in accordance with the provisions of the NFPA 160, Standards for Flame Effects Before an Audience, 2001 Edition.

G. Mike Davis, State Fire Marshal, has determined that for each year of the first five years the proposal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed standards. Mr. Davis has also determined that there will be no adverse effect on local employment or the local economy.

Mr. Davis also has determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit from enforcing and administering the section will be improved and more efficient regulation of pyrotechnic displays and flame effects. Additionally, the viewing public will be better protected from potential fire and other potential perils as a result of the adoption and enforcement of the proposal which incorporates NFPA 160 and 1126, Standards for Use of Pyrotechnics Before a Proximate Audience and Standards for Flame Effects Before an Audience, respectively. In part, these national standards mandate safeguards to include requiring complete operational fire-sprinkler systems or personnel to implement standby fire watch, requiring the promoters of the display to provide the local authority with jurisdiction a copy of the display plan; requiring the promoter to notify the display audience of the sprinkler alarm system, that pyrotechnics or flame effects will be used, and where the fire exits are located. Additionally, the NFPA standards require that at least one pyrotechnic special effects licensee and one flame effects operator licensee be present on-site for the duration of the event and shall enforce compliance with the standards. With the new requirement to use licensed flame effects operators, who must pass a written flame effects examination with at least a grade of 70% to be licensed, displays will be performed by individuals with a greater level of skill and expertise in the use of flame effects.

The estimated cost to purchase the NFPA 1126 manual is $23.50 and the NFPA 160 manual is also $23.50. The flame effects operator license fee is $25, renewal fee (prior to expiration) is $25, initial examination fee is $20 and the reexamination fee is $20. If the flame effects operator allows his license to expire, renewal within 90 days of expiration is $25 for the renewal fee and $12.50 for the initial, totaling $37.50. If the flame effects operator allows his license to expire, renewal between 91 days and two years of expiration is $25 for the renewal fee and $25 for the initial, totaling $50. The cost to a person or entity qualifying as a small or micro-business under the Government Code §2006.001 will be the same as the cost to the largest business because the cost is not dependent upon the size of the business but rather is the same price for all purchasers of the standards manuals and all applicants for flame effects operator licenses. In addition, it would neither be legal nor feasible to waive the requirements of the amendments since these standards are a matter of public safety and improve and increase efficiency of regulations of pyrotechnics and flame effects.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 1, 2003, to Gene C. Jarmon, General Counsel & Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to G. Mike Davis, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amended sections are proposed pursuant to the Occupations Code §§2154.052, 2154.156, 2154.253 and the Insurance Code §36.001. Occupations Code §2154.052 allows the commissioner to adopt and the fire marshal to administer rules that the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks, and the commissioner may use standards published by a nationally recognized standards-making organization. Section 2154.156 requires an individual be licensed as a flame effects operator if he assembles, conducts, or supervises flame effects under §2154.253. Section 2154.253 mandates compliance with NFPA safety standards for the use of flame effects or pyrotechnics for entertainment, exhibition, demonstration, or simulation before an assembly of 50 people of more, except for public safety demonstrations. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to

implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by the proposed sections: Occupations Code §§2154.052, 34.814 and 34.826.2154.156 and 2154.253.

*§34.808. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (17) (No change.)

(18) Flame effects operator--An individual who, by experience, training, or examination, has demonstrated the skill and ability to safely assemble, conduct, or supervise flame effects in accordance with §2154.253, Occupations Code.

(19) [~~(18)~~] Generator--Any device driven by an engine and powered by gasoline or other fuels to generate electricity for use in a retail fireworks stand.

(20) [~~(19)~~] Highway--The paved surface, or where unpaved, the edge of a graded or maintained public street, public alley, or public road.

(21) [~~(20)~~] Indoor retail fireworks site--A retail fireworks site other than a retail stand which sells Fireworks 1.4G from a building or structure.

(22) [~~(21)~~] License--The license issued by the state fire marshal to a person or a fireworks firm authorizing same to engage in the business.

(23) [~~(22)~~] Licensed firm--A person, partnership, corporation, or association holding a current license.

(24) [~~(23)~~] Magazine--Any building or structure, other than a manufacturing building, used for storage of Fireworks 1.3G.

(25) [~~(24)~~] Manufacturing--The preparation of fireworks mixes and the charging and construction of all unfinished fireworks, except pyrotechnic display items made on site by qualified personnel for immediate use when such operation is otherwise lawful.

(26) [~~(25)~~] Master electric switch--A manually operated device designed to interrupt the flow of electricity.

(27) [~~(26)~~] Mixing building--A manufacturer's building used for mixing and blending pyrotechnic composition, excluding wet sparkler mixes.

(28) [~~(27)~~] Multiple public display permit--A permit issued for the purpose of conducting multiple public displays at a single approved location.

(29) [~~(28)~~] Nonprocess building--Office buildings, warehouses, and other fireworks plant buildings where no explosive compositions are processed or stored. A finished firework is not considered an explosive composition.

(30) [~~(29)~~] Open flame--Any flame that is exposed to direct contact.

(31) [~~(30)~~] Process building--A manufacturer's mixing building or any building in which pyrotechnic or explosive composition is pressed or otherwise prepared for finishing and assembling.

(32) [~~(31)~~] Public display permit--A permit authorizing the holder to conduct a public fireworks display using Fireworks 1.3G, on a single occasion, at a designated location and during a designated time period.

(33) [~~(32)~~] Retail fireworks site--The structure from which Fireworks 1.4G are sold and in which Fireworks 1.4G are held pending retail sale.

(34) [~~(33)~~] Retail stand--A retail site which sells Fireworks 1.4G over the counter to the general public who always remain outside the structure.

(35) [~~(34)~~] Safety container--A container especially designed, tested, and approved for the storage of flammable liquids.

(36) [~~(35)~~] School--Any inhabited building used as a classroom or dormitory for a public or private primary or secondary school, or institution of higher education.

(37) [~~(36)~~] Selling opening--An open area including the counter, through which fireworks are viewed and sold at retail.

(38) [~~(37)~~] Storage facility--Any building, structure, or facility in which finished Fireworks 1.4G are stored, but in which no manufacturing is performed.

(39) [~~(38)~~] Supervisor--A person 16 years or older who is responsible for the retail fireworks site during operating hours.

(40) [~~(39)~~] Walk door--An opening through which retail stand attendants can freely move and which can be secured to keep the public from the interior of the stand.

*§34.809. General Requirements, Licenses and Permits.*

(a) Each firm or person engaged in the manufacture, transportation, storage, wholesale or retail sales of fireworks, public displays utilizing Fireworks 1.3G, pyrotechnic special effects operators, flame effects operators, and pyrotechnic operators shall have an applicable license or permit issued by the state fire marshal.

(1) Licenses by type:

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

(D) pyrotechnic operator; [~~and~~]

(E) pyrotechnic special effects operator, and~~.~~

(F) flame effects operator.

(2) (No change.)

(b) - (j) (No change.)

*§34.811. Requirements, Pyrotechnic Operator License, [~~and~~] Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.*

(a) Applicants for a pyrotechnic operator license, [~~or~~] pyrotechnic special effects operator license or flame effects operator license shall take a written examination and obtain at least a passing grade of 70%. Written examinations may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The content, type, frequency, and location of the examinations shall be set by the state fire marshal.

(b) - (f) (No change.)

*§34.813. Applications for Licenses and Permits.*

(a) - (e) (No change.)

(f) When an application for a permit is required by the Occupations Code §2154.253 for the use of flame effects or pyrotechnics before an assembly of fifty people or more and is submitted to the state fire marshal, as the authority having jurisdiction because the political subdivision has no fire marshal, local fire protection district, or emergency services district, the application shall be on the form provided by the state fire marshal and include the following information:

(1) the name, address, and telephone number of the applicant;

(2) the date, time, and the alternate date and time of the event;

(3) the location or alternate location for the event;

(4) the names and license numbers of the pyrotechnic operator and the flame effects operator who will be on-site at all times and who will supervise the event;

(5) the plan and information required by NFPA 1126 and NFPA 160;

(6) evidence of general liability insurance, as required by the Occupations Code §2154.207;

(7) name and employer of person who will give verbal instruction regarding the location and use of available exits and information on the building fire protection system as required by §2154.253, Occupations Code; and

(8) whether the building contains a complete operational sprinkler system or personnel that will implement a stand-by fire watch.

*§34.814. Fees.*

(a) - (b) (No change.)

(c) Fees shall be as follows:

(1) - (7) (No change.)

(8) single public display permit $50; [~~and~~]

(9) agricultural, industrial, and wildlife control permits $10; and[~~.~~]

(10) flame effects operator:

(A) initial fee $25;

(B) renewal fee (prior to expiration) $25;

(C) initial examination fee $20;

(D) reexamination fee $20.

(d) - (e) (No change.)

(f) Late fees are as follows.

Figure: 28 TAC §34.814(f)

*§34.826. Preparing and Conducting Public Pyrotechnic Displays and Flame Effects.*

(a) (No change.)

(b) Sobriety. Licensed [~~Pyrotechnic~~] operators or assistants shall not be under the influence of or consume alcoholic beverages or [~~and/or~~] controlled substances during the public display.

(c) - (g) (No change.)

(h) Flame effects criteria. The use of flame effects before an assembly of 50 people or more shall be conducted in accordance with the provisions of the National Fire Protection Association (NFPA) 160, Standards for Flame Effects Before an Audience, 2001 Edition.

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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# PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

## CHAPTER 124. CARRIERS: REQUIRED NOTICES AND MODE OF PAYMENT

**28 TAC §124.1**

The Texas Workers' Compensation Commission (the commission) proposes amendments to §124.1, concerning Notice of Injury. The amendment is proposed to address changes made by House Bill 2199 (HB-2199) and Senate Bill 1282 (SB-1282) passed by the 78th Texas Legislature, 2003, to Texas Labor Code §§409.021 and 504.002. Both bills amended §409.021 by adding subsection (f) (each with slightly different language) to define that "written notice" to a certified self-insurer occurs when written notice is received by the qualified claims servicing contractor designated by the certified self-insurer under Texas Labor Code §407.061(c). HB-2199 additionally amended Texas Labor Code §409.021(f) and SB-1282 amended §504.002 to define "written notice" to a political subdivision that self-insures (either individually or collectively through an interlocal agreement as described by Section 504.011) as written notice to the intergovernmental risk pool or other entity responsible for administering the claim. The proposed amendments to §124.1 describe what constitutes "written notice" for insurance carriers whether a certified self insured, a political subdivision, or other type of carrier. Written notice of injury is an important concept in the workers' compensation system because receipt of this notice triggers claims administration duties regarding the claim.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

The commission proposes to amend §124.1 by adding new subsection (b) to address written notice to a certified self-insurer. This amendment provides that "written notice" to a certified self-insurer occurs only upon written notice to the qualified claims servicing contractor designated by the certified self-insurer under Texas Labor Code §407.061(c).

The commission proposes to amend §124.1 by adding new subsection (c) to address written notice to a political subdivision. This amendment provides that "written notice" to a political subdivision that self-insures, either individually or collectively through an interlocal agreement as described by Section 504.011, occurs only upon written notice to the intergovernmental risk pool or other entity responsible for administering the claim.

The remaining subsections have been redesignated as §124.1 (d)-(f).

Heidi Jackson, Director of Hearings Division, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Ms. Jackson has determined that for each year of the first five years the rule as proposed is in effect there will be no additional costs to any persons required to comply with the rule as proposed. Ms. Jackson has also determined that the public benefits anticipated as a result of enforcing the rule will be compliance with and implementation of legislative directives and consistency in the rules under which all Texas Workers' Compensation system participants function. Carriers and injured employees will benefit from the clarification of when a notice of injury is received. This should reduce the number of disputes regarding when payments are due and reduce the number of violations for late benefit payments. There will be no cost to any participants in the system as a result of enforcement of the rule as proposed.

There will be no adverse economic impact on small businesses or on micro-businesses as a result of the proposed new rules. There will be no difference in the cost of compliance for small businesses and micro-businesses as compared to large businesses because the same basic processes and procedures apply to all entities regardless of size.

Comments on the proposal must be received by 5:00 p.m., December 17, 2003. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us*, clicking on "Laws, Rules & Forms" and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@ twcc.state.tx.us* or by mailing or delivering your comments to Linda Velásquez, Legal Services, Mailstop #4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1609.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on December 17, 2003, at the Austin central office of the commission (7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1609). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us.*

The new sections are proposed under the Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code §406.010, which authorizes the Commission to adopt rules regarding claims service; Texas Labor Code §407.001 which defines qualified claims servicing contractors; Texas Labor Code §407.061, which sets out the general requirements for eligibility for a certificate of authority to self-insure; Texas Labor Code §409.021, which requires the insurance carrier to notify the Commission and employee of the initiation of compensation or the insurance carrier's refusal to initiate payment; Texas Labor Code §504.002, which establishes the applicability of general workers' compensation laws to political subdivisions; and Texas Labor Code §504.011, which sets out the methods by which a political subdivision shall extend workers' compensation benefits to employees.

The new sections are proposed under the Texas Labor Code §§402.061, 406.010, 407.001, 407.061, 409.021, 504.002, 504.011.

The previously cited sections of the Texas Labor Code are affected by this proposed rule action. No other code, statute, or article is affected by this rule action.

*§124.1. Notice of Injury.*

(a) Except as provided in subsections (b) and (c) of this section, written [~~Written~~] notice of injury, as used in the Texas Workers' Compensation Act, §409.021, consists of the insurance carrier's earliest receipt of:

(1) the Employer's First Report of Injury as described in §120.2 of this title (relating to Employer's First Report of Injury);

(2) the notification provided by the Commission under subsection (c) of this section; or

(3) if no Employer's First Report of Injury has been filed, any other communication regardless of source, which fairly informs the carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury and information which asserts the injury is work related.

(b) Written notice of injury for a certified self-insurer is received on the date the qualified claims servicing contractor designed by the self-insurer under Texas Labor Code §407.061(c) receives the notice.

(c) Written notice of injury for a political subdivision that self-insures under Texas Labor Code §504.011, either individually or through an interlocal agreement with other political subdivisions, is received on the date the intergovernmental risk pool or other entity responsible for administering the claim receives the notice.

(d) [~~(b)~~] The carrier shall immediately create a written record on paper or in an electronic format of the earliest notice of injury as defined in subsection (a) of this section that is not received in writing. The date of receipt of a written notice of injury shall be deemed to be the earliest date the carrier receives the information identified in subsections (a)(1), (2), or (3) of this section. Upon request of the Commission, a carrier shall provide an affidavit indicating the receipt or non-receipt of a notice of injury received and the receipt date.

(e) [~~(c)~~] The Commission shall furnish written notification to the carrier when a source other than the carrier reports:

(1) an injury that may cause the employee eight days or more of disability or has resulted in an impairment;

(2) a death; or

(3) an occupational disease.

(f) [~~(d)~~] If a carrier is notified of an injury for which it has not received an Employer's First Report of Injury, from the employer, the carrier shall contact the employer regarding the injury within seven days of notification.

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 October 17, 2003.

TRD-200306900
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 804-4287

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## CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

## SUBCHAPTER E. HEALTH FACILITY FEES

### 28 TAC §134.402

The Texas Workers' Compensation Commission (the commission) proposes new §134.402 concerning the Ambulatory Surgical Center Fee Guideline, one of several rules that will comprise Subchapter E, regarding Health Facility Fees.

This new rule is proposed to comply with numerous and complex statutory mandates in Texas Labor Code §413.011. House Bill 2600 (HB-2600), adopted during the 2001 Texas Legislative Session, amended §413.011 to add new requirements for commission reimbursement policies and guidelines. The statute requires that guidelines for medical services fees be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. Several research reports (discussed below) have shown that Texas workers' compensation medical costs exceed those in other states and in other health care delivery systems.

Section 413.011 also states that the guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission must consider the increased security of payment afforded by the Texas Workers' Compensation Act (the Act) in establishing the fee guidelines.

The revised statute also requires that the commission:

* use health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements;

* adopt the most current reimbursement methodologies, models, and values or weights used by the federal Health Care Financing Administration (HCFA) to achieve standardization, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet the requirements of §413.053 of the Act (relating to Standards of Reporting and Billing); and

* develop conversion factors or other payment adjustment factors in determining appropriate fees, taking into account economic indicators in health care.

Section 413.011 states that this section of the law does not adopt the Medicare fee schedule, and conversion factors or other payment adjustment factors (PAFs) developed by HCFA should not be the sole basis for any such factors adopted by the commission.

Currently, the Texas workers' compensation system does not have a fee schedule for healthcare provided in outpatient settings, which includes ambulatory surgical centers (ASCs). Therefore, those services are reimbursed on a case-by-case determination of what is fair and reasonable under section §134.1 of this title (relating to Use of the Fee Guidelines). Reimbursements for all reasonable and medically necessary medical and/or surgical inpatient services are currently established by §134.401 of this title (relating to Acute Care Inpatient Hospital Fee Guideline). Professional medical services are covered in §134.202 of this title (relating to Medical Fee Guideline), and subchapter F (relating to Pharmaceutical Benefits) of Chapter 134 of the commission rules.

The proposed rule establishes a reimbursement methodology for services provided by an ASC health care facility. The proposed rule uses the required Medicare methodology for determining reimbursement in the Texas workers' compensation system to comply with the new provisions in Texas Labor Code §413.011. The proposed rule provides standardization of reimbursement methods and billing procedures by aligning the workers' compensation reimbursement structures with the structures used by the Centers for Medicare and Medicaid Services (CMS), formerly HCFA.

The commission has recently received several hundred disputes regarding reimbursement for ASC medical services. To make a determination regarding each of these disputes in the absence of an established guideline, commission rule 134.1 provides that, "reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission." Varying methodologies of determining fair and reasonable ASC reimbursement utilized by carriers have produced divergent results in ASC reimbursement rates. Many ASC medical fee dispute decisions issued by the commission have been appealed to the State Office of Administrative Hearings (SOAH), which currently has on its docket, numerous ASC disputes to be heard. In addition, commission rule 134.1, has been challenged in court by some ASCs.

In an effort to provide further clarification regarding ASC reimbursement, until an ASC fee guideline is adopted, the commission issued Advisory 2003-09, which outlines the types of information the commission evaluates in determining whether a particular fee for ASC services meets the statutory requirements. This proposed ASC fee guideline establishes maximum allowable reimbursement rates for the majority of medical services within the ASC setting, eliminating the potentially inconsistent results that can occur when the general statutory standards are used on a case by case basis.

The commission is confident that this rule proposal for ASC maximum allowable reimbursement will reduce the number of dispute requests and any associated appeals of commission decisions to the SOAH level. With an established fee guideline, reimbursement for all system participants should be predictable and consistent. The commission anticipates fewer ASC dispute requests and decreased probability of ongoing or new litigation associated with ASC services.

Several research reports have shown that Texas workers' compensation medical costs continue to exceed those in other states and other health care delivery systems.

* Policy year 1995 data show that the average medical cost per claim in Texas exceeds the national average by almost 80% ($4,912 in Texas compared to $2,735 nationwide). (Texas Research and Oversight Council (ROC) on Workers' Compensation and Med-FX, LLC., *Striking the Balance: An Analysis of the Cost and Quality of Medical Care in the Texas Workers' Compensation System, A Report to the 77th Texas Legislature,* January 2001, citing National Council on Compensation Insurance (NCCI), *Annual Statistical Bulletin,* 1999.)

* The average medical payment (paid and incurred) per claim with more than seven days' lost-time in Texas was the highest of the eight states analyzed (California, Connecticut, Florida, Georgia, Massachusetts, Minnesota, Pennsylvania, and Texas). Together these states account for at least 40% of the nation's workers' compensation benefits. (WCRI, *Benchmarking the Performance of Workers' Compensation Systems: CompScope Multistate Comparisons,* July 2000.)

* In claims from 1996, the average medical payment per claim in Texas was $6,495, which is 35% higher than the states' average. (WCRI, July 2000)

* The average of medical payments in Texas per claim with seven or more days lost time was the highest of the states in the analysis (33% higher than the states' average and 36% higher than the states' median). (WCRI, *The Anatomy of Workers' Compensation Medical Costs and Utilization: A Reference Book,* December 2000)

* The average of medical payments in Texas for all claims was 47% higher than the states' average and 53% higher than the states' median. (WCRI, December 2000)

* Of nine states analyzed (California, Colorado, Florida, Georgia, Kentucky, Minnesota, New Jersey, Oregon, and Texas), Texas has the highest average medical costs per claim (more than 20% higher than the second-highest state, New Jersey, and more than 2.5 times higher than the lowest-cost state, Kentucky). (ROC, January 2001)

* When similar types of injuries were compared in the group health and workers' compensation systems, Texas had higher than average medical costs for the top five types of injuries. (ROC, January 2001)

* When compared with group health (a State of Texas employee Preferred Provider Organization (PPO) group health plan), average workers' compensation medical costs for State of Texas injured employees were approximately six times higher per worker ($578 per worker in this group health system compared to $3,463 per worker in the Texas workers' compensation system, 18 months post-injury). (ROC, January 2001)

* Texas continues to have the highest average medical payment per claim among the study states - 78 percent higher than the 12-state median for all claims and 39 percent higher than the 12-state median for claims with more than seven days of lost time for 1999/2000. (WCRI, *The Anatomy of Workers' Compensation Medical Costs and Utilization: Trends and Interstate Comparisons, 1996-2000,* July 2003)

* Texas continues to have the highest average medical payment per claim among the study states - 29 percent higher than the 12-state average for claims with more than seven days of lost time for 1999/2000. (WCRI, *The Anatomy of Workers' Compensation Medical Costs and Utilization: Trends and Interstate Comparisons, 1996-2000,* July 2003)

* Texas continues to have the highest average medical payment per claim among the study states - 57.2 percent higher than the 12-state average for all claims for 1999/2000. (WCRI, *The Anatomy of Workers' Compensation Medical Costs and Utilization: Trends and Interstate Comparisons, 1996-2000,* July 2003)

The Medicare reimbursement system has primarily progressed from a retrospective fee for service reimbursement system to a prospective payment system (PPS). Under the Medicare PPS, facilities receive a fixed amount for treating patients in certain diagnostic and/or procedural categories. Reimbursement is based on specific diagnostic and/or procedural groupings, resource utilization, national and regional averages, and costs specific to the facility.

Complete information concerning all Medicare reimbursement methodologies for facilities can be found at the CMS website (*www.cms.hhs.gov*), Code of Federal Regulations, and the Federal Register. Currently for ASC services, primarily surgeries, Medicare reimburses using the ASC case rate methodology. Payment is determined based on the surgeries performed, the associated grouping(s), and the geographic wage index of the facility.

In June 2001, the commission entered into a professional services agreement with Ingenix, Inc., (Ingenix), a professional firm specializing in actuarial and health care information services, to assist the commission in developing new fee guidelines to address fees for health care services provided in inpatient and outpatient facilities and ambulatory surgical centers. Ingenix reviewed Medicare payment policies and reimbursement methodologies in reference to the Texas workers' compensation system to achieve standardization and to adopt the most current reimbursement methodologies, models, and values or weights used by the CMS, including applicable payment policies relating to coding, billing, and reporting as mandated by Texas Labor Code §413.011.

Ingenix analyzed inpatient, outpatient and Ambulatory Surgical Center (ASC) services separately. In general, the following steps were performed for each service type. The specific process used, as well as the methodology, data, and data sources is detailed in the Ingenix Final Report, which is available for review from the commission.

Development of the recommended range required the following steps:

* Estimate the number of covered lives and utilization for Medicare and for each type of commercial insurance contract;

* Determine historical Texas payment levels for Medicare and for commercial insurance by type of contract;

* Adjust the Medicare and commercial contract history to a workers' compensation mix of services;

* Trend forward the historical payment levels;

* Project the 2004 payment level currently in place for TWCC payers; and

* Establish a recommended range for reimbursement as a percent of Medicare.

Additionally, Ingenix reviewed and analyzed the current market using Medicare, commercial and commission historical medical

claims reimbursement information. Ingenix also looked at other states' workers' compensation facility reimbursement in comparison to Medicare reimbursement, but was unable to develop comparisons because each state approached their reimbursement methodology differently. Taking into account health care economic indicators, Ingenix made recommendations concerning Medicare reimbursement methodologies and PAFs to be used in determining appropriate reimbursement and estimated system impact. Ingenix further provided recommendations regarding minimal modifications to Medicare reimbursement methodologies and payment policies necessary to meet occupational injury requirements.

Historical commission medical claims data provided a Texas workers' compensation mix of services for use in the analysis. This utilization pattern was applied to the commercial market (health maintenance organization, preferred provider organization, point of service, and indemnity plans) and Medicare reimbursement levels, establishing an estimated reimbursement for a workers' compensation case mix. This reimbursement was expressed as a percent of charges and as a percent of Medicare reimbursement. Information considered in the development of the analysis included:

* Commission historical claims data;

* The Mercer/Foster Higgins National Survey of Employer-Sponsored Health Plan 2001 (formerly the Harkey Report on Texas Managed Care) that summarized enrollment and market share information for commercial managed care plans in Texas;

* Texas commercial indemnity and managed care reimbursement rates from Ingenix Employer Group;

* Ingenix proprietary national managed care payer data regarding volume of services, charged and allowed reimbursement amounts to estimate the level of ASC business compared to outpatient, and ASC allowed-to-charge ratios compared to outpatient allowed-to-charge ratios;

* National Center for Health Statistics and Bureau of the Census data to estimate the covered lives in the Texas commercial insurance/managed care market;

* Data published by Interstudy that provided national commercial managed care reimbursement rates;

* Data published by the American Hospital Association that provided hospital outpatient charges per service;

* Source Book of Health Insurance Data; and

Medicare reimbursement amounts.

ASC market reimbursement percentages were based on a mix of services that were equivalent to the Texas workers' compensation mix of services and reimbursement rates trended forward to 2003, and ultimately 2004. Ingenix also trended forward the Medicare ASC reimbursement rates to 2004. Ingenix concluded, as a result of its market analysis, that if current reimbursement trends continue, in 2004 Texas workers' compensation ambulatory surgical center claims will be reimbursed at approximately 320% of 2004 Medicare reimbursement. Ingenix also projected that 2004 commercial market reimbursement for the same mix of claims would be approximately 274% (not including indemnity plans) to 293% (including indemnity plans) of 2004 Medicare reimbursement.

In setting the recommended PAF range, Ingenix considered whether to include indemnity experience in the market experience. While Ingenix found no difference in standards of living between people with commercial indemnity experience and injured workers, there are several reasons to consider excluding indemnity experience:

* Commercial indemnity represents only about 4% to 5% of the combined Medicare and commercial market. Removing commercial indemnity from the analysis removes experience that is higher than 95% of the payment levels for people of a similar standard of living.

* Payments for commercial indemnity plans are disproportionately higher than payments for the rest of the market, essentially making commercial indemnity payments outliers.

* Statutory requirements set forth in §413.011 mandate that payment be made no higher than would be paid by or for people with similar standards of living.

* No cost controls are in place in the commercial indemnity market, and the Texas workers' compensation law mandates that in setting the fee structure, consideration be given to cost control.

Commercial indemnity plans provide coverage for individuals with standards of living similar to the rest of the commercial market, suggesting indemnity plans be included in the PAF range calculations. Including indemnity plans would increase the PAF because more weight would be placed on commercial reimbursement rates, thus reducing the impact of the lower Medicare payments.

In contrast, the indemnity payment levels are outliers, suggesting that they be excluded. Indemnity plans reimburse at a considerably higher rate than other commercial payers. Indemnity is a very small portion of the commercial market. Excluding indemnity plans would decrease the PAF because less weight would be placed on commercial reimbursement rates, thus increasing the impact of the lower Medicare payments.

In order to provide the most comprehensive range of fair and reasonable reimbursement rates, and address the statutory requirement for cost control and prohibition against paying higher than would be paid by or for persons with similar standards of living, Ingenix excluded the indemnity experience at the lower end of the range and included it at the higher end of the range.

Ingenix initially recommended a 2003 range of 230% (not including indemnity plans) to 250% (including indemnity plans). Upon the commission's request for 2004 projections, Ingenix recommended the 2004 PAF range of 237% (not including indemnity plans) to 264% (including indemnity plans) of Medicare for ambulatory surgical center reimbursement, as a proper balance of the complex statutory objectives.

In developing the proposal for the Health Facility Fees, one of which is this proposed rule, commission staff met and discussed issues with various stakeholders, including hospitals, ambulatory surgical centers, specialty care facilities, the Texas Hospital Association, the Texas Workers' Compensation Research and Oversight Council and the primary HB-2600 Legislative Stakeholders group. The HB-2600 Legislative Stakeholders group included: a delegation of employers, insurance carriers, utilization review organizations, and other interested parties working together under the umbrella name, Texas Association of Business Technical Work Group; Texas Chiropractic Association; Texas

Osteopathic Medical Association; and the Texas Medical Association. Stakeholder participation included discussion of Medicare reimbursement policies and identification of any areas of concern and also included an informal comment period where stakeholders were given a conceptual presentation of the rule and an opportunity to provide input to the commission.

The commission's Medical Advisory Committee (MAC) was presented with general historical commission medical claims data, current commission and Medicare reimbursement methodologies, and information regarding guideline development. The MAC provided feedback concerning issues and potential impact through discussion and individual written responses. The MAC also formed a facility fee guideline workgroup consisting of MAC members and external interested parties, which provided additional input to the commission.

The commission is authorized by Texas Labor Code §413.011 to apply additions or exceptions necessary for adaptation of the Medicare system to the Texas workers' compensation system. Medicare payment policies may retroactively alter payment amounts of previously paid claims and require the Medicare system participants to re-adjudicate claims and reconcile payments. The commission determined that such retroactive payment policies would create undue administrative burden if applied to the Texas workers' compensation system. Consequently, the proposed rule requires the use of the most current Medicare policies in effect when the services were provided, with the exception of retroactive payment policies.

The Act requires provision of all medical services that are medically necessary to cure or relieve the effects of a work-related injury. Medical necessity must be established prospectively through preauthorization or concurrent review for non-emergency healthcare provided in an ASC. While the proposed rule incorporates the broad terms of site-specific limitations for ambulatory surgical centers contained in the Medicare payment policies, alternative settings can be used if approved through preauthorization or concurrent review.

Texas Labor Code § 413.011 requires the commission to adopt necessary conversion factors or payment adjustment factors (PAF) to establish fair and reasonable reimbursement in the Texas workers' compensation system. Additionally, the commission must take into account economic indicators in health care and the requirements found in subsection (d) of §413.011. The statute also states that the commission shall not adopt a payment adjustment factor (PAF) based solely on those payment adjustment factors developed by the Centers for Medicare and Medicaid Services (formerly HCFA). The commission is proposing a multiplier or PAF of 230% of Medicare reimbursement rates for the reimbursement of ambulatory surgical center facility services.

In considering subsection (d) of section 413.011, the rate proposed establishes fair and reasonable reimbursement that is designed to ensure continued access to quality care, along with appropriate medical cost control. Ingenix also stated that in certain instances, going outside the recommended range to meet statutory requirements would be appropriate. Given the data available for analysis, Ingenix indicated that anywhere down to 90% of the low endpoint and up to 110% of the high endpoint of the recommended ASC range would be appropriate. Ingenix noted that points in the extended range satisfactorily balance the complex statutory objectives. The commission's proposed rate of 230% of Medicare is within this extended range. However, to further address cost containment efforts provided by the statute, reimbursement is limited to not exceed the amount established by the commission in a fee guideline for the same or similar service provided in either an inpatient or outpatient hospital setting.

The proposed PAF multiplier for ASCs is considerably higher than the 125% multiplier provided in §134.202, the commission's Medical Fee Guideline, which covers reimbursement of professional medical services provided within the Texas workers' compensation system. There are several reasons for this. Unlike professional medical services, whose cost inputs are continuously updated by CMS, Medicare has not significantly revised ASC cost inputs since 1994. Moreover, the percentage of Medicare patients who receive ASC services (surgeries) is significantly less than the percentage of Medicare patients who receive professional medical services (typically, physician services). Finally, Medicare reimbursements for professional medical services are generally within the range of payments made by commercial payers; however, Medicare reimbursements for ASC services are well below the range of payments made by most commercial payers for those services. Thus, while the resulting multipliers are different in the two contexts, they are consistent with one another to the extent that the commission has determined that reimbursement for the two types of services is appropriate at the low end of the range of reimbursement provided within the commercial market.

The commission may in the future propose fee guidelines for outpatient facility services, and amendments to the current inpatient fee guideline. TWCC inpatient hospital services are currently reimbursed under the existing TWCC rules that provide for per diem payments. Ingenix has noted that the current inpatient methodology is reasonably standardized, but does not reflect the recent statutory requirement to use Medicare reimbursement methodologies. Ingenix also noted that outpatient hospital and ASC payments are currently not standardized in the TWCC system or the market in general and the lack of detail in the available data makes it difficult to determine the current mix of services that are being delivered. Consequently, Ingenix has recommended that the commission adopt a single Payment Adjustment Factor (PAF) for each setting; e.g., inpatient, outpatient, and ASC. Because the relationship of the Medicare reimbursement to the commercial market varies between inpatient, outpatient, and ASC services, it is likely that the PAF proposed for inpatient and outpatient may differ from the PAF proposed for ASCs in this rule.

Proposed new §134.402 establishes reimbursements for ambulatory surgical center health facility services provided on or after the effective date of the new rule. The proposed new rule provides a standardized reimbursement method and billing procedures by aligning the workers' compensation reimbursement structure with the structure used by the CMS.

Proposed subsection (a) of the rule establishes the applicability of the guideline for reimbursements for health care provided in an ASC on or after June 1, 2004, other than professional medical services. The policies and reimbursement methodologies in effect for Medicare on the date a service is provided are the policies and reimbursement methodologies to be used in the Texas workers' compensation system. Subsection (a) requires use of the most recent payment policies adopted by the Medicare program for compliance with commission rules, decisions, and orders. This will prevent the Texas workers' compensation system from falling out of synchronization with Medicare and will achieve the standardization goals established in Texas Labor Code §413.011. Specific provisions contained in the workers'

compensation Act and commission rules shall take precedence over any conflicting provision adopted or utilized by CMS in administering the Medicare program.

Proposed subsection (b) of the rule requires system participants to utilize the Medicare reimbursement methodologies, models, and values or weights, including its coding, billing, and reporting payment policies for coding, billing, reporting, and reimbursement of health facility services provided in the Texas workers' compensation system. This allows for the basic Medicare program provisions to be applied with any additions or exceptions necessary for adaptation to the Texas workers' compensation system. The Medicare program is not a static system. Medicare policies change frequently. To achieve standardization it is necessary to use the Medicare billing and reimbursement policies as they are modified by CMS. Adoption of policies in effect on a particular date would require participants in the Texas workers' compensation system to bill and reimburse in a manner different from the current Medicare system that makes some policies retroactive. Therefore, the proposed rule, in compliance with the statute, requires the use of the Medicare policies in effect on the day that a service is provided.

Proposed subsection (c) establishes the method to be used for determining the maximum allowable reimbursement (MAR) for ambulatory surgical center health facility services in the Texas workers' compensation system. In establishing the PAF for the rule, the commission considered the statutory requirements and objectives and utilized Medicare data, current commission reimbursement levels, and available commercial payer information.

Proposed §134.402, Ambulatory Surgical Center (ASC) Fee Guideline, establishes a facility specific reimbursement amount by setting a PAF to apply to the Medicare reimbursement. Although Ingenix initially provided analysis based on 2003 projection, the final Ingenix analysis and report is based on 2004 projections. This 2004 review estimated that ASC reimbursement under current TWCC rules (requiring fair and reasonable reimbursement) equals approximately 320% of 2004 Medicare reimbursement. Additionally, this review estimated commercial (HMO/PPO/POS/Indemnity) payer reimbursement equal to a range of 168% to 564%. This commercial range produces a weighted average of approximately 274% (not including indemnity plans) to 293% (including indemnity plans) of Medicare reimbursement. With Medicare added to the commercial market, the weighted average for ASC services trended to 2004 is 237% (not including indemnity plans) to 264% (including indemnity plans) of Medicare reimbursement.

Proposed subsection (c) additionally provides directions for a system of payment that allows a carrier to reimburse a fair and reasonable amount for services for which neither Medicare nor the commission establishes a payment amount. The amount may be based on nationally recognized published studies, published commission medical dispute decisions, and/or reimbursements for health care involving similar work and resource commitments which are consistent with both the facts and the standards of §134.1.

Proposed subsection (d) provides that the reimbursement for ASC services is the lesser of the MAR as established by the rule; or the facility's and payer's workers' compensation negotiated and/or contracted amount that applies to the billed service(s). To further address cost containment efforts provided by the statute, reimbursement is limited to not exceed the amount established by the commission in a fee guideline for the same or similar service provided in either an inpatient or outpatient hospital setting.

Proposed subsection (e) addresses the exceptions and minimal modifications to the Medicare payment policies. In the Medicare system, at times reimbursement is adjusted after initial payment. Providers sometimes receive additional reimbursement while in other situations the Medicare fiscal intermediary (carrier), which is generally the sole fiscal intermediary for each ASC, recoups previously reimbursed amounts. This Medicare payment policy is too complex and unduly burdensome to administer in the Texas workers' compensation system, in which there are numerous carriers that could potentially reimburse an ASC. Therefore, as stated in (e), a retroactive Medicare payment policy that would result in a payment adjustment will not apply to services already provided.

Medicare payment policies restrict the setting in which certain services may be performed. As stated in subsection (e), these restrictions apply unless an alternative setting has been approved through the commission's process for preauthorization, concurrent review, or voluntary certification.

Proposed subsection (f) provides that the invalidation of any terms or parts of a section or its application to any person or circumstance by a court of competent jurisdiction does not affect other provisions or applications of the section that can be given effect without the invalidated provision or application.

Judy Bruce, Director of the Medical Review Division, has determined the following fiscal impact on state and local governments as a result of enforcing or administering the proposed rule for the first five-year period the proposed rule is in effect. With regard to enforcement and administration of the rule by state government, the commission will experience increased costs in some areas and decreased costs in others. Increased costs may include expenses associated with the preparation of training materials, purchase of related software, and presentation of training classes for commission staff and system participants, and costs associated with monitoring the Medicare payment policies.

It is anticipated that the number of medical fee disputes filed with the commission may increase during the first twelve months after implementation of this rule, resulting from new payment method and the utilization of Medicare billing and payment policies. Due to this potential increase, the commission anticipates increased costs for processing and resolution of those fee disputes.

However, after system participants become familiar with the policies and the commission's administration of these policies, the use of standardized coding, billing, and methodology is expected to result in fewer disputes regarding medical reporting, billing and reimbursement because use of:

* a standardized reimbursement structure found in other health care delivery systems should reduce the number of disputes, in part because of familiarity with other reimbursement systems, and in part because of the predictability of reimbursement amounts;

* the most current Medicare program reimbursement methodologies, models and weights or values is expected to eliminate some disputes because changes in Medicare reimbursement system will be reflected in the Texas workers' compensation system as they become effective, keeping the system current and therefore reducing the number of disputes relating to the amount of reimbursement;

* standardized components of the Medicare system should decrease the cost and time required for the commission to review or revise the fee schedules; and

* the number of fee disputes involving a fair and reasonable methodology is expected to decrease significantly due to the adoption of the standardized methods used by Medicare.

Fewer fee disputes should ultimately decrease costs to the commission.

There may be some increase in revenue to the commission as a result of enforcing or administering the rule due to an initial increase in disputes processed by the commission. Although the fees from the increase in this activity will increase revenue, these fees generally cover expenses only and are expected to reflect an initial increase and a subsequent decrease in dispute activity compared to the current number of disputes.

There will be no fiscal impact on local government as a result of enforcing or administering the rule, as local governments do not have regulatory authority with respect to this rule. Local governments and state governmental entities as regulated entities will be impacted in the same manner as other persons required to comply with the rule as proposed. Aggregate medical costs should decrease in the system. The commission cannot predict if local governments will experience a decrease in their premium costs if the local government's workers' compensation coverage is provided by an insurance company. Any local government that is self-insured will likely experience a cost decrease if utilization and injury experience remain unchanged.

Ms. Judy Bruce has also determined that for each year of the first five years the proposed rule is in effect, the public benefits anticipated as a result of the proposed rule include use of a reimbursement system with a well-known, standardized structure for delivery of quality medical care with effective cost control, that will provide positive benefits to all participants in the system: injured employees, employers, insurance carriers, and health care providers. Aggregate medical costs should decrease in the system, as this rule establishes a reimbursement methodology and amount for services that are currently reimbursed in the aggregate at higher fees, under the fair and reasonable standard established by the statute. Adoption of the Medicare payment policies should ultimately lead to the reduction of administrative costs and the number of medical disputes, benefiting all system participants. There will, however, be initial start-up costs for carriers to convert their automated system to a Medicare based methodology. These costs are difficult to quantify since each carrier has unique processing systems and internal controls. For ASCs, the reimbursement method used by Medicare is relatively simple and has been in use for some time. The administrative cost to convert to this reimbursement system should be small.

The commission estimates that the proposed rule will result in an aggregate reduction in ASC facility payments when applied to historical workers' compensation system claim costs. The commission projects a similar impact on future aggregate claim costs, assuming that there is not a significant shift in the distribution of claims. A number of other factors could affect the impact including frequency of injury, severity of injury, changes in the practice of medicine for injured workers in Texas, distribution of services provided, current billing practices, and random fluctuations.

Because the value assigned to the case rate reimbursement methodology is also based on the relative costs required to provide a service, reimbursements under the proposed rule are more closely related to the resources required to provide the services. The re-alignment of these case rate systems makes the Texas workers' compensation system more comparable to other health care systems and should discourage over utilization of services that have been subject to a fair and reasonable reimbursement methodology. This will benefit injured employees by preventing unnecessary treatment and delayed return to work. A decrease in medical costs may result in a decrease in workers' compensation insurance premiums, which in turn may increase the number of employers who elect to provide workers' compensation coverage, ultimately benefiting injured employees.

Due to the lack of reimbursement standardization for ASCs in the current workers' compensation system, it is difficult to predict the related change in facility specific reimbursement. Generally, ASCs will experience a reduction in payments. However, the impact of the new fee schedule may vary for each ASC. The level of variation will depend on the services provided by the ASCs, the amounts previously billed by ASCs for those services, and the mix of carriers and various reimbursement methodologies used for reimbursement under the current fair and reasonable standard. Because the commission data does not have sufficient detail to indicate what services were provided and what carriers provided reimbursement for those services at a particular ASC, it is difficult, if not impossible, to predict the impact of the new schedule on individual ASCs.

Ingenix and the commission estimate overall reimbursement at 230% of Medicare under the proposed §134.402 Ambulatory Surgical Center Fee Guidelines to be approximately 28% less than the current reimbursement. Overall reimbursement under a PAF of 237% was estimated to be approximately 26% less than the current reimbursement. These estimates are based upon the assumption that all ASCs would receive payment at the MAR amount established by this proposed rule. However, if a substantial number of payments are limited based upon inpatient and outpatient hospital reimbursement levels, the amount of the reduction will be greater.

Most carriers should experience reduced medical benefit costs as a result of lower unit prices and an expected reduction in over-utilization and unreasonable billing practices. Medical services are a significant portion of benefit costs employers pay through workers' compensation insurance premiums or directly through self-insurance programs. Employers will benefit from the reduction in aggregate medical costs, which should be favorably reflected in the cost to employers to provide workers' compensation coverage. This will, in turn, potentially increase the availability of coverage to injured workers. In addition, if the new rules reduce over-utilization of medical services, it may also enhance an injured employee's ability to return to work.

Use of standardized coding, reporting, billing, and reimbursement methodologies in the rule as proposed is expected to initially increase but ultimately decrease fee disputes within the workers' compensation system as participants become familiar with the system. Carriers and health care facilities may experience increased cost if the rule generates more disputes initially. However, as system participants become more familiar with the application of CMS policies, the number of disputes and costs to both carriers and health care facilities should decrease.

Health care facilities will benefit from the use of standardized methodologies, reporting, billing, and coding requirements. Some stakeholders and MAC members indicated that health

care facilities should find the standardized Medicare reimbursement methods more predictable than the current Texas workers' compensation system reimbursement and thus benefit from the standardization. Additionally, some health care facilities are familiar with the CMS systems, as most health care facilities are Medicare providers.

Insurance carriers should ultimately benefit from use of standardized methodologies, reporting, billing, and coding requirements and decreased disputes as they become accustomed to the CMS systems.

There will be some anticipated economic costs to persons required to comply with the rule as proposed. There will be no economic costs to injured employees, as this proposed rule does not impose any requirements on injured employees. The potential benefit of coverage of employees is discussed elsewhere in this note.

Employers who purchase workers' compensation insurance should experience no direct economic impact from the requirement to comply with this proposed rule because there is no additional administrative requirement for the employer. The potential benefit of smaller premiums and ability to offer coverage to employees is discussed elsewhere in this note.

Self-insured employers who self-administer and perform their own medical bill review should experience costs related to compliance that will likely be offset by a decrease in overall medical reimbursement and in the number of fee disputes. Self-insured employers who outsource claims adjusting and/or medical bill review costs will be impacted based on their vendor relationships but may be offset by a decrease in overall medical reimbursement and in the number of fee disputes.

ASC facilities that do not currently participate in the Medicare system will have some costs associated with training staff and adapting their billing systems to utilize the Medicare policies for their worker's compensation population. Once trained, the costs to bill for workers' compensation health care may remain the same and perhaps even decrease at some point in time when the reimbursement methods have become more static. Facilities are instructed to bill their usual and customary fees; therefore it is not necessary for facilities to calculate Medicare reimbursement in order to bill for services. Facilities that are already participating in the Medicare system will not experience these same increased costs.

Insurance carriers should experience the same increased costs in some areas. It is anticipated that the initial administrative expense may be substantial for a carrier to begin processing reimbursements on a basis consistent with Medicare. Health care facilities and insurance carriers who perform only a small amount of work in the workers' compensation system may be able to comply with these rules without incurring costs. Small carriers in the market may find it feasible to arrange for a third party to act as a claims vendor. For those carriers that do not currently participate in the Medicare system, increased costs include costs associated with training staff and adapting their claim systems to utilize the various Medicare policies for ASC facility reimbursement. Those who are already participating in the Medicare system or using Medicare billing and reimbursement policies will also experience some of these same increased costs to adapt to a worker's compensation system. As discussed, these costs should ultimately be offset by the reduction in fee payments and the decrease in the number of fee disputes.

Small businesses or micro-businesses that would be impacted by this rule include employers, carriers, and ASCs. Most carriers (and employers who pay their premiums) will experience a decrease in payments to ASCs and the operational costs of compliance for carriers and employers will be offset as discussed above. Therefore, there will be no adverse economic impact on small businesses or micro-businesses that are carriers or employers.

Increased operational costs of compliance for ASCs will be offset as discussed above. However, the commission does anticipate a potential adverse economic effect on ASCs that are small or micro-businesses as a result of this proposed rule. This will not be due to any costs of compliance with the rule, as ASCs will incur nominal, if any, additional costs of complying with the rule. Instead, the economic effect on ASCs will result from any reduction in fees that they are reimbursed for services rendered. The ASCs that will be most detrimentally affected in this regard will be those that provide, either exclusively or in large part, services to injured employees within the workers' compensation system and who are largely reimbursed at comparatively high rates. The commission has considered whether the rule proposal should be revised to reduce potential economic impact on small businesses and micro-businesses, but has concluded that it is not feasible to reduce this potentially adverse economic effect without undermining the express purposes of Texas Labor Code §413.011: to develop fees that are designed not only to ensure the quality of care but also to achieve effective medical cost control. The commission is also constrained by the requirement that the rule may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living.

The change in the amount of payments to ASCs will also economically affect carriers. While the aggregate amount paid to ASCs by most carriers will decrease, some carriers will in the aggregate pay more to ASCs. These are the carriers that have been substantially lowering payments to ASCs for some time, during which time the number of medical fee disputes filed by ASCs has increased. To some extent, the increased payments by these carriers will be offset by decreased costs from standardization and fewer fee disputes for resolution by the commission and the State Office of Administrative Hearings (SOAH); there appears to be a correlation between the carriers who pay the lowest fees to ASCs and the carriers with high numbers of fee disputes filed by ASCs. Thus, the carriers who will be paying more pursuant to the proposed rule are most likely the ones that will also experience the greatest savings from a reduction in fee disputes and SOAH proceedings. Whether any of these carriers constitutes a small business or micro-business is not known. The commission has considered whether the rule proposal should be revised to reduce potential economic impact on small businesses and micro-businesses, but has concluded that it is not feasible to reduce this potentially adverse economic effect without undermining the express purposes of Texas Labor Code §413.011: to develop fees that are designed not only to ensure the quality of care but also to achieve effective medical cost control. The commission is also constrained by the requirement that the rule may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living.

There will be no difference in economic effect between ASCs that are small or micro-businesses and those that are the largest businesses. There will be no difference in the cost of compliance for small businesses and micro-businesses as compared to the

largest businesses. The same basic processes and procedures apply, regardless of the size or volume of the business. The business size cost difference will be in direct proportion to the volume of business that falls under the purview of this proposed rule.

Comments on the proposed rule must be received by 5:00 p.m., December 17, 2003. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* clicking on "Laws, Rules and Forms," and then on "Proposed Rules." This medium for commenting will help you organize your comments. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Linda Velásquez, Legal Services, Mailstop #4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1609.

Commenters are requested to clearly identify by number the specific rule and paragraph (e.g., 134.402 (a)(1), 134.402(b), 134.402(c)(2), etc.) commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Revisions that may be made from the proposed rule include, but are not limited to, the PAF and associated reimbursements, which may be revised to be higher than proposed or lower than proposed, and the effective date.

Persons in support or opposition of the rule as proposed, in whole or in part, are encouraged to comment to that effect. The failure to comment accordingly is not indicative of support or opposition.

A public hearing on this proposal will be held on December 17, 2003 at the Austin central office of the commission (7551 Metro Center Drive, Suite #100, Austin, Texas 78744-1609). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us.*

The new rule is proposed under Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code §408.021, which entitles injured employees to all health care reasonably required by the nature of the injury as and when needed; Texas Labor Code §413.002, which requires the commission's Medical Review Division monitor health care providers, insurance carriers and claimants to ensure compliance with commission rules; Texas Labor Code §413.007, which sets out information to be maintained by the commission's Medical Review Division; Texas Labor Code §413.011, which mandates that the commission by rule establish medical policies and guidelines; Texas Labor Code §413.012, which requires review and revision of the medical policies and fee guidelines at least every two years; Texas Labor Code §413.013, which requires the commission by rule to establish programs related to health care treatments and services for dispute resolution, monitoring, and review; Texas Labor Code §413.014, which requires express preauthorization by the insurance carrier for health care treatments and services; Texas Labor Code §413.015, which requires insurance carriers to pay charges for medical services as provided in the statute and requires that the commission ensure compliance with the medical policies and fee guidelines through audit and review; Texas Labor Code §413.016, which provides for refund of payments made in violation of the medical policies and fee guidelines; Texas Labor Code §413.017, which provides a presumption of reasonableness for medical services fees that are consistent with the medical policies and fee guidelines; Texas Labor Code, §413.019, which provides for payment of interest on delayed payments refunds or overpayments; and Texas Labor Code §413.031, which provides a procedure for medical dispute resolution.

The new rule is proposed under the Texas Labor Code §§402.061, 408.021, 413.002, 413.007, 413.011, 413.012, 413.013, 413.014, 413.015, 413.016, 413.017, 413.019, and 413.031.

The previously cited sections of the Texas Labor Code are affected by this proposed rule action. No other code, statute, or article is affected by this rule action.

*§134.402. Ambulatory Surgical Center Fee Guideline.*

(a) Applicability of this rule is as follows:

(1) This section applies to facility services provided by an ambulatory surgical center, other than professional medical services.

(2) This section applies to facility services provided by an ambulatory surgical center on or after June 1, 2004.

(3) Specific provisions contained in the Texas Workers' Compensation Act (Act) or Texas Workers' Compensation Commission (commission) rules, including this rule, shall take precedence over any conflicting provision adopted or utilized by the Centers for Medicare and Medicaid Services (CMS) in administering the Medicare program. Exceptions to Medicare payment policies for medical necessity may be provided by commission rule. Independent Review Organization (IRO) decisions regarding medical necessity are made on a case-by-case basis. The commission will monitor IRO decisions to determine whether commission rulemaking action would be appropriate.

(4) Whenever a component of the Medicare program is revised and effective, use of the revised component shall be required for compliance with commission rules, decisions and orders for services rendered on or after the effective date of the revised component.

(b) For coding, billing, reporting, and reimbursement of facility services covered in this rule, Texas workers' compensation system participants shall apply the Medicare program reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies in effect on the date a service is provided with any additions or exceptions in this section.

(c) To determine the maximum allowable reimbursement (MAR) for a particular service, system participants shall apply the Medicare payment policies for these services, with the following minimal modifications:

(1) the Medicare facility specific reimbursement amount shall be multiplied by 230%; or,

(2) for services for which neither Medicare nor the commission establishes a payment amount, the carrier shall reimburse a

fair and reasonable amount, which may be based on nationally recognized published studies, published commission medical dispute decisions, and/or reimbursements for facility services involving similar work and resource commitments which are consistent with both the facts and the standards of §134.1 of this title (relating to Use of the Fee Guidelines).

(d) In all cases, reimbursement shall be the lesser of the:

(1) MAR amount established by this rule regardless of billed amount;

(2) facility's and payer's workers' compensation negotiated and/or contracted amount that applies to the billed service(s); or

(3) the amount established by the commission in a fee guideline for the same or similar service provided in either an inpatient or outpatient hospital setting.

(e) Notwithstanding Medicare payment policies, exceptions and minimal modifications are as follows:

(1) whenever Medicare requires a retroactive payment policy change, the change shall not apply to services already provided; and

(2) whenever Medicare requires a specific setting for a service, that restriction shall apply, unless an alternative setting and payment has been approved through preauthorization, concurrent review, or voluntary certification.

(f) Where any terms or parts of this section or its application to any person or circumstance are determined by a court of competent jurisdiction to be invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalidated provision or application.

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 October 17, 2003.

TRD-200306902
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 804-4287

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## SUBCHAPTER F. PHARMACEUTICAL BENEFITS

### 28 TAC §134.503, §134.504

The Texas Workers' Compensation Commission (the commission) proposes amendments to §§134.503, concerning Reimbursement Methodology and 134.504, concerning Pharmaceutical Expenses Incurred by the Injured Employee.

The Texas Register published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

The amendments are proposed to implement a statutory change enacted by House Bill 833 during the 78th Texas Legislature, 2003, in which a new subsection (e) was added to Texas Labor Code §408.028 to allow an injured employee the option of obtaining a brand name drug at their own expense rather than accepting a generic pharmaceutical drug or over-the-counter alternative to a prescription drug prescribed by a health care provider. As amended the statute provides a means for the employee to be responsible for paying the difference between the cost of the brand name drug and the cost of the generic pharmaceutical drug or the cost of an over-the-counter alternative to a prescription drug. The employee may not seek reimbursement for the difference in cost from an insurance carrier and is not entitled to use the medical dispute resolution provisions of Chapter 413 of the Texas Labor Code with regard to the amount charged by the health care provider. As a result of this new statutory language, a health care provider's receipt of payment from an employee does not violate §413.042 of the Texas Labor Code concerning Private Claims, Administrative Violation. There is no change to the duty of a health care provider to prescribe generic prescription drugs when available and clinically appropriate and to prescribe over the counter medications in lieu of a prescription drug when clinically appropriate. These proposed amendments to §§134.503 and 134.504 implement changes made as a result of the addition of new §408.028(e).

The commission proposes to amend §134.503(b) establishing the manner in which a pharmacist should dispense a generic drug when it is prescribed, or when a prescription does not require the use of a brand name drug and the manner in which a pharmacist should dispense a brand name drug when the injured employee chooses to receive a brand-name drug instead of the prescribed generic drug. The rule as amended allows an employee to decline a generic drug and to opt for a brand name drug by agreeing to pay the additional cost.

Currently, §134.504 provides a process for the injured employee to obtain reimbursement for drugs that have been purchased out-of-pocket. Proposed amendments to §134.504 clarify the existing process for the injured employee to obtain reimbursement for drugs that have been purchased out-of-pocket. Proposed new subsection (b) provides the process and the responsibilities of the dispensing health care provider, the employee and the carrier when an employee chooses to pay the difference in cost between generic drugs and brand name drugs. The proposed amended language necessitates re-numbering the subsections and paragraphs within the rule.

Judy Bruce, Director of Medical Review, has determined that for the first five-year period the proposed rules are in effect there will not be fiscal implications for state or local governments as a result of enforcing or administering the rule because there will be no change in the process for these entities.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rules as proposed.

Ms. Bruce has also determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the amended rules will be an improved system for pharmaceutical delivery that will provide positive benefits to all participants in the system. The proposed rule amendments benefit system participants by implementing the changes in the Texas Labor Code.

The proposed amended rules will provide employees additional access to brand name drugs by allowing the employee to chose to pay the difference in cost between generic and brand name

drugs. The employee's ability to choose to pay the additional cost of a brand name drug in the workers' compensation system is similar to other health care systems that allow the selection of a brand name drug. Allowing choices similar to those that employees are familiar with in other health care systems avoids confusion regarding the delivery of pharmacy services in the workers' compensation system. In addition, injured employees and pharmacists will benefit from the proposed amendments because the clarification regarding reimbursement and the procedures provided by the proposed amendments will encourage pharmacists to provide services for injured employees.

The benefits of the proposed amendments to employers is the assurance that their injured employees are receiving appropriate and medically necessary medication and that their employers have pharmaceutical choices similar to other health care systems.

Insurance carriers will benefit from the clarification provided by the amendments of the carrier's responsibilities when the employee chooses to pay the difference in cost between generic and brand name drugs.

Prescribing health care providers and pharmacists will benefit from the proposed amended rules in that they will have clear guidelines to follow when prescribing and filling prescriptions for drugs. Clear guidelines outlining prescribing and reimbursement will assist the prescribing health care provider and pharmacist in making decisions and should result in a reduction in disputes. The proposed rules will also encourage pharmacists to provide services for injured employees.

There will be minimal anticipated economic costs to persons who are required to comply with the rules as proposed. The decision to pay the difference in cost between generic and brand name drugs is the decision of the employee. If the employee is not able to pay the difference between the drugs, the employee will receive the generic drug that was prescribed by their health care provider.

The financial impact on a pharmacy will vary depending on that pharmacy's current practice of dispensing generics versus name brand drugs, and the pharmacy's profit margin for generic drugs versus name brand drugs. There are no foreseeable economic costs to insurance carriers or health care providers as a result of the proposed amendments.

There will be no adverse economic impact on small businesses or on micro-businesses as a result of the proposed amendments. There will be no difference in the cost of compliance for small businesses and micro-businesses as compared to large businesses because the same basic processes and procedures apply to all entities regardless of size.

Comments on the proposal must be received by 5:00 p.m., December 17, 2003. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* and then clicking on "Laws, Rules & Forms" and then "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Linda Velásquez, Legal Services, Mailstop #4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1609.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect. Commenters may wish to express their opinion regarding an employee's ability to refuse a generic prescription, and include references to statutory authority supporting that opinion. A public hearing on this proposal will be held on December 17, 2003 at the Austin central office of the commission (7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1609). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communication at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us.*

These amendments are proposed pursuant to Texas Labor Code §402.042, that authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code §406.010, that authorizes the commission to adopt rules necessary to specify the requirements for carriers to provide claims service and establishes that a person commits a violation if the person violates a rule adopted under this section; Texas Labor Code §408.021(a), that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; Texas Labor Code §408.025, that requires the commission to specify by rule what reports a health care provider is required to file; and Texas Labor Code §408.028, that requires health care practitioners providing care to an employee to prescribe any necessary prescription drugs in accordance with applicable state law.

The amendments to these rules are proposed under: Texas Labor Code, §402.042, §402.061, §406.010, §408.021(a), §408.025, and §408.028.

The previously cited sections of the Texas Labor Code are affected by this proposed rule action. No other code, statute, or article is affected by this rule action.

*§134.503. Reimbursement Methodology.*

(a) The maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of:

(1) The provider's usual and customary charge for the same or similar service;

(2) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook, First Data Bank Services) in effect on the day the prescription drug is dispensed.

(A) Generic drugs: ((AWP per unit) x (number of units) x 1.25) + $4.00 dispensing fee = MAR;

(B) Brand name drugs: ((AWP per unit) x (number of units) x 1.09) + $4.00 dispensing fee = MAR;

(C) A compounding fee of $15 per compound shall be added for compound drugs; or

(3) A negotiated or contract amount.

(b) When the doctor has written a prescription for a generic [~~prescription~~] drug or a prescription that does not require the use of a brand-name drug in accordance with §134.502(a)(3), reimbursement shall be as follows: [~~the pharmacist shall dispense and be reimbursed for the generic pharmaceutical medication.~~]

(1) the pharmacist shall dispense the generic drug as prescribed and shall be reimbursed the fee established for the generic drug in accordance with subsection (a) of this section; or

(2) when an injured employee chooses to receive a brand-name drug instead of the prescribed generic drug, the pharmacist shall dispense the brand-name drug as requested and shall be reimbursed:

(A) by the insurance carrier, the fee established for the prescribed generic drug in accordance with subsection (a) of this section; and

(B) by the employee, the cost difference between the fee established for the generic drug and the fee established for the brand-name drug in accordance with §134.503(a)(2)of this title.

(c) When the doctor has written a prescription for a brand-name drug in accordance with §134.502(a)(3), reimbursement shall be in accordance with subsection (a) of this section.

(d) [~~(c)~~] Reimbursement for over-the-counter medications shall be the retail price of the lowest package quantity reasonably available that will fill the prescription.

(e) [~~(d)~~] This section applies to the dispensing of all drugs except inpatient drugs and parenteral drugs.

(f) [~~(e)~~] Upon request by the provider, the insurance carrier shall disclose the source of the AWP used.

*§134.504. Pharmaceutical Expenses Incurred by the Injured Employee.*

(a) It may become necessary for an injured employee to purchase prescription drugs or over-the-counter alternatives to prescription drugs prescribed or ordered by the treating doctor or referral health care provider. In such instances the injured employee may request reimbursement from the insurance carrier as follows: [~~by submitting a request to the carrier~~]

(1) [~~(b)~~] The injured employee shall submit to the insurance carrier a letter requesting reimbursement along with a receipt indicating the amount paid and documentation concerning the prescription [~~a copy of the prescription~~]. The letter should include information to clearly identify the claimant such as the claimant's name, address, date of injury, and social security number. Documentation for prescription drugs submitted with the letter from the employee must include the prescribing health care provider's name, the date the prescription was filled, the name of the drug, employee's name and dollar amount paid by the employee. As examples, this information may be provided on an information sheet provided by the pharmacy, or the employee can ask the pharmacist for a print out of work related prescriptions for a particular time period. Cash register receipts alone are not acceptable.

(2) [~~(c)~~] The insurance carrier shall make appropriate payment to the injured employee in accordance with §134.503, or notify the injured employee of a reduction or denial of the payment within 45 days of receipt of the request for reimbursement from the injured employee. If the insurance carrier does not reimburse the full amount requested, or denies payment the carrier shall include a full and complete explanation of the reason(s) the insurance carrier reduced or denied the payment and shall inform the injured employee of his or her right to request medical dispute resolution in accordance with §133.305 of this title (relating to Medical Dispute Resolution). The statement shall include sufficient claim-specific substantive information to enable the employee to understand the insurance carrier's position and/or action on the claim. A general statement that simply states the carrier's position with a phrase such as "not entitled to reimbursement" or a similar phrase with no further description of the factual basis does not satisfy the requirements of this section.

(b) An injured employee may choose to receive a brand-name drug rather than a generic drug or over-the-counter alternative to a prescription medication that is prescribed by a health care provider. In such instances, the injured employee shall pay the difference in cost between generic drugs and brand-name drugs. The transaction between the employee and the pharmacist is considered final and is not subject to medical dispute resolution by the Commission. In addition, the employee is not entitled to reimbursement from the insurance carrier for the difference in cost between generic and brand name drugs.

(1) The injured employee shall notify the pharmacist of their choice to pay the cost difference between generic and brand name drugs. An employee's payment of the cost difference constitutes an acceptance of the responsibility for the cost difference and an agreement not to seek reimbursement from the carrier for the cost difference.

(2) The pharmacist shall:

(A) determine the costs of both the brand-name and generic drugs by using the reimbursement formulas stated in §134.503(a)(2), and notify the injured employee of the cost difference amount;

(B) collect the cost difference amount from the injured employee in a form and manner that is acceptable to both parties;

(C) submit a bill to the insurance carrier for the generic drug that was prescribed by the doctor; and

(D) not bill the injured employee for the cost of the generic drug if the insurance carrier reduces or denies the bill.

(3) The insurance carrier shall review and process the bill from the pharmacist in accordance with Chapter 133 and 134 (pertaining to General Medical Provisions and Benefits-Guidelines for Medical Services, Charges, and Payment, respectively.)

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 October 17, 2003.

TRD-200306901
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 804-4287

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

# PART 10. TEXAS WATER DEVELOPMENT BOARD

## CHAPTER 353. INTRODUCTORY PROVISIONS

## SUBCHAPTER H. COLLECTING DELINQUENT OBLIGATIONS

**31 TAC §§353.120 - 353.122**

The Texas Water Development Board (board) proposes new 31 TAC §§353.120, 353.121, and 353.122 concerning Introductory Provisions. These new proposed rules are to establish procedures for collecting delinquent obligations and a reasonable time period for collection. The board is authorized to promulgate these proposed rules by Chapter 2107 of the Texas Government Code.

First, the board proposes to add these new sections into a new subchapter, Subchapter H, relating to Collecting Delinquent Obligations. This is to properly organize these new rules in the chapter.

The board proposes new §353.120 to define the terms used in the new subchapter. Section 2107.002 of the Texas Government Code authorizes the Texas attorney general to adopt uniform guidelines for the process by which a state agency collects delinquent obligations. The attorney general has adopted rules found at 1 Texas Administration Code §§59.2 and 59.3. The definitions proposed in §353.120 are straight from those adopted by the attorney general.

The board proposes new §353.121 to describe the steps taken to determine that an obligation owed the board is delinquent. The new section also describes the record keeping that the board will conduct to establish the identity and address of debtors. This proposed rule closely follows the language of the attorney general's guidelines found at 1 T.A.C. §59.2.

The board proposes new §353.122 to describe the steps taken to collect a delinquent debt. This proposed rule closely follows the language of the attorney general's guidelines found at 1 T.A.C. §59.2. The proposed rule requires the board to verify the address and telephone number of a delinquent debtor and send two demand letters to the debtor, as required by 1 T.A.C. §59.2(b)(6)(B) of the attorney general's guidelines. The proposed rule also requires the board to utilize the comptroller of public accounts' warrant hold procedures, as required by the attorney general guidelines and Texas Government Code §21007.008. The proposed rule also outlines the review criteria for determining if a delinquent obligation is uncollectible, as required by 1 T.A.C. §59.2(b)(6)(C). Lastly, the proposed rule describes how the board will refer delinquent obligations to the attorney general for further collection efforts, pursuant to Chapter 2107 of the Texas Government Code and 1 T.A.C. §§59.2 and 59.3.

These new proposed sections are intended to comply with Texas Government Code, Chapter 2107 and 1 T.A.C. §§59.2, and 59.3.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that, for the first five-year period these changes are in effect, there will be no additional fiscal implications on state and local government. Only those entities that have delinquent debts owed to the board shall be affected by the proposed rules.

Ms. Callahan has also determined that, for the first five years the changes as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be to improve and enhance the probability of collecting delinquent obligations owed the state. Ms. Callahan has determined there will be no increased economic cost to small businesses or individuals because the proposed new provisions do not require any actions by small businesses or individuals.

Comments on the proposed new sections will be accepted for 30 days following publication and may be submitted to Ron Pigott, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by email at Ron.Pigott@twdb.state.tx.us, or by fax at (512) 463-5580.

The new sections are proposed under the authority of Texas Government Code §2107.002.

The statutory provision affected by the proposed new sections is Texas Government Code, Chapter 2107, §2107.002

*§353.120. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Attorney General--The Office of the Attorney General, acting through the Bankruptcy and Collections Division of the agency.

(2) Board--The Texas Water Development Board.

(3) Debt--The dollar amount of all delinquent monetary obligations claimed by the board to be owed, regardless of any legal disability or defense of the debtor.

(4) Debtor--Any person or entity liable or potentially liable for an obligation owed to the Texas Water Development Board or against whom a claim or demand for payment has been made by the Texas Water Development Board.

(5) Delinquent--Payment is past due, by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(6) Executive administrator--The executive administrator of the Texas Water Development Board or the executive administrator's designated representative.

(7) Judgment--A valid and subsisting judgment of a court of law that is not on appeal, nor void or stale.

(8) Make demand--To deliver or cause to be delivered by United States mail, first class, a writing setting forth the nature and amount of the obligation owed to the Texas Water Development Board. A writing making demand is a "demand letter."

(9) Obligation--A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(10) Security--Any right to have property owed by an entity with an obligation to a state agency sold or forfeited in satisfaction of the obligation; and any instrument granting a cause of action in favor of the Texas Water Development Board against another entity and/or that entity's property, such as a bond, letter of credit, or other collateral that has been pledged to the agency to secure an obligation.

(11) Uncollectible--As it refers to delinquent obligations, means that circumstances indicate a permanent inability of a debtor to make payments towards the obligation; the debtor has been legally relieved of the obligation; or the debt is legally unenforceable. Such circumstances include, but are not limited to, bankruptcy discharge, the

death of the debtor, the revocation of a charter of a debtor corporation without assets, etc.

*§353.121. Procedures For Establishing A Delinquent Obligation.*

(a) In every fiduciary or trust relationship between the board as principal and a debtor as trustee, or in any transaction that could result in a debtor owing the board an obligation, the board shall collect and maintain an accurate physical address and telephone number for the person or entity. A post office box address will only be accepted in addition to the physical address or when it is impractical to obtain the physical address.

(b) Before an obligation is treated as delinquent, it must be examined by the board's general counsel or designated attorney to determine liability of each person responsible for the obligation and whether the liability is under statute or common law.

*§353.122. Procedures For Collecting A Delinquent Obligation.*

(a) When an obligation has been determined to be delinquent, pursuant to §353.122 of this title (relating to Procedures For Establishing A Delinquent Obligation), the board shall take the following steps.

(1) Verify the debtor's address and telephone number, to the extent possible.

(2) Use the comptroller of public accounts' warrant hold procedures to prevent payment to a delinquent debtor.

(3) Within 30 days of the obligation being determined to be delinquent, send the debtor a demand letter for the full amount of the obligation.

(4) If the debtor does not respond to the demand letter, send a second demand letter no sooner than 30 days but not more than 60 days after the first demand letter was mailed.

(5) Verify that the obligation is not legally uncollectible or uncollectible as a practical matter.

(A) In cases of bankruptcy, the board shall prepare and timely file a proof of claim, when appropriate, in the bankruptcy case of each debtor. Copies of all such proofs of claims filed shall be sent to the attorney general. The board shall maintain records of notices of bankruptcy filings, dismissals, and discharge orders to enable it to ascertain whether the collection of the claim is subject to automatic stay provisions or whether the debt has been discharged.

(B) If the obligation is subject to an applicable limitation provision that would prevent suit as a matter of law, the obligation will not be referred to the attorney general unless circumstances indicate the limitations provision has been tolled or is otherwise inapplicable.

(C) If a corporation has been dissolved, has been liquidated under Chapter 7 of the United States Bankruptcy Code, or has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, had its certificate of authority revoked, the obligation shall be referred to the attorney general unless circumstances indicate the account is clearly uncollectible. These circumstances shall be documented in the appropriate account file.

(D) If the debtor is an individual and is located out-of-state, or outside the United States, the matter shall not be referred to the attorney general unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of board funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified. The board shall consult with the attorney general in making such determinations.

(E) If the debtor is deceased, the board shall file a claim in each probate proceeding administering the decedent's estate. If such probate proceeding has concluded and there are no remaining assets of the decedent available for distribution, the delinquent obligation shall be classified as uncollectible and not referred to the attorney general. If probate administration is pending or if none has been opened, any referral to the attorney general shall include an explanation of any circumstances indicating that the decedent has assets available to apply towards satisfying the obligation.

(6) If the debtor does not respond to the second demand letter within 30 days of it being mailed, and if the debt is not determined to be legally uncollectible or uncollectible as a practical matter, the board shall report the uncollected and delinquent obligation to the attorney general for further collection efforts. However, delinquent obligations upon which a bond or other security is held shall be referred to the attorney general no later than 60 days after becoming delinquent. If the principal has filed for relief under federal bankruptcy laws, the account shall be referred to the attorney general immediately upon notice or as soon as the board knows of the filing.

(b) Demand letters sent by the board shall include a statement, where practical, that the debt, if not paid, will be referred to the Texas attorney general's office. The demand letters shall be mailed in envelopes bearing the notation "address service requested" in conformity with the current regulations and policies of the United States Postal Service. If an address correction is provided by the United States Postal Service, the affected demand letter shall be resent to the address provided.

(c) Where permitted by state law, the board shall file a lien securing an obligation in the appropriate records of the county where the debtor's principal place of business or, where appropriate, the debtor's residence is located or in such county as may be required by law. The lien shall be filed as soon as the obligation becomes delinquent or as soon as is practicable. If the delinquent obligation is referred to the attorney general in accordance with this section, the lien may not be released unless the board receives written approval from the attorney general or if the delinquent obligation is paid in full.

(d) Where practicable, the board shall maintain individual collection histories of each account in order to document attempted contacts with the debtor, the substance of the communications with the debtor, efforts to locate the debtor and assets, and other information pertinent to collection of the delinquent account.

(e) The procedures of this section do not apply to:

(1) bonds or other debt obligations held by the board as evidence of debt incurred through the board's financial assistance programs for which collection remedies are provided by the debt vehicle or by law; or

(2) any debt for which a collection process is already determined by 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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306779

Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: December 17, 2003
For further information, please call: (512) 476-2246

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# CHAPTER 354. MEMORANDA OF UNDERSTANDING

**31 TAC §354.1, §354.4**

The Texas Water Development Board (the board) proposes amendments to 31 TAC §§354.1 and 354.4 concerning the Memoranda of Understanding. The amendments are proposed for cleanup and clarification as a result of the four-year rule review requirement of Texas Government Code §2001.039.

The board proposes to amend to §354.1, memorandum of understanding between the board and the Texas Antiquities Committee, to update the name of the Texas Antiquities Committee to the Texas Historical Commission and to update several statutory provisions which have been re-codified. In addition, the deadline for a board archeologist to send a survey report to the Texas Historical Commission is extended from 30 days to 45 days of the date of completion of the survey.

The board proposes to amend §354.4, memorandum of understanding between the board and the Office of Rural Community Affairs, to execute a new memorandum of understanding with the Office of Rural Community Affairs ("Office"), in line with the 2003 Appropriations Act of the Texas Legislature. The current memorandum expired on August 31, 2003. The proposed amendments will establish a new memorandum that is significantly similar to the previous memorandum, to run to August 31, 2005. No change is proposed to the scope of the responsibilities for each party. New provisions include a joint performance report to the Legislative Budget Board and a time limit for the use of Office funds.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of the amendments.

Ms. Callahan has also determined that for the first five years the sections, as proposed, are in effect, the public benefit anticipated as a result of enforcing the sections will be clearer, more concise board rules governing these areas. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Staff Attorney, General Counsel Office, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax at (512) 463-5580.

The proposed amendments are proposed under the authority of the Texas Water Code, §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and §6.104 which authorizes the board to enter into memorandum of understanding with other state agencies.

The statutory provision affected by the proposed amendments is Texas Water Code, Chapter 6 and Texas Water Code, §16.342.

*§354.1. Memorandum of Understanding Between Texas Water Development Board and Texas Historical Commission [~~Antiquities Committee~~].*

(a) Introduction.

(1) Whereas, the Texas Water Development Board (hereinafter TWDB) and the Texas Historical Commission (THC)/Archeology Division (AD) [~~Antiquities Committee (TAC)/Department of Antiquities Protection (DAP)~~] desire to enter into a memorandum of understanding (MOU) under which TWDB is granted permission under the Antiquities Code of Texas for ongoing, long-term surveys by TWDB staff archeologists for all types of archeological sites which relate to proposed development projects funded by the TWDB; and

(2) Whereas, under the provisions of the Texas Natural Resources Code, the THC [~~TAC~~] is charged with the responsibility of the protection and preservation of the archeological and historical resources of Texas; and

(3) Whereas, under the provisions of Texas Natural Resources Code, Chapter 191, Subchapter C, §191.051, [~~and~~] §191.053, and §191.054, THC [~~TAC~~] may contract with or issue permits to other state agencies for the discovery and scientific investigation of archeological deposits; and

(4) Whereas, under the provisions of Texas Water Code, Chapter 6, §6.104, TWDB may enter into a MOU with any other state agency and shall adopt by rule any MOU between TWDB and any other state agency; and

(5) Whereas, under the provisions of this MOU, an Antiquities Permit is to be issued by THC [~~TAC~~] to TWDB for each calendar year that this agreement is in effect, subject to fulfillment of stipulated conditions;

(6) Now, therefore, the TWDB [~~Texas Water Development Board~~] and the THC [~~Texas Antiquities Committee~~] agree to enter into this memorandum of understanding to provide archeological surveys of all projects to be constructed with financial assistance from the TWDB [~~Texas Water Development Board~~].

(b) Responsibilities. In a systematic manner, TWDB will conduct surveys for all types of archeological sites on lands belonging to or controlled by any county, city or other political subdivision of the State of Texas which may be impacted by proposed development projects that are funded in whole or in part by TWDB. Where appropriate, all surveys must consist of pedestrian surveys and sample subsurface probing (either shovel or mechanical testing, as appropriate) of proposed construction or development areas that may yield evidence of cultural resources (both historic and prehistoric), including areas that may receive direct impact from construction traffic.

(1) TWDB will comply with Texas Administrative Code requirements for a principal investigator as listed in 13 Texas Administrative Code §26 [~~§41.5~~] of the THC [~~TAC~~] Rules of Practice and Procedure. Each individual, as principal investigator, must be involved in at least 25% of the field investigation performed under the agreement.

(2) TWDB's staff archeologists will send the AD [~~Department of Antiquities Protection (DAP)~~] advance written notification of the following activities: proposed reconnaissance, 100% pedestrian surveys and/or sample subsurface probing investigations. The notification letters must include information on the type of project development proposed to receive TWDB financial assistance, the kind of archeological investigation proposed, the principal investigator or co-principal

investigators intending to conduct the investigation, and the expected dates of the field work.

(3) TWDB staff archeologists will send AD [~~DAP~~] a report within 45 [~~30~~] days of the completion of each investigation, notifying AD [~~DAP~~] of the findings of the investigation. The report must contain information on the basic scope of the work, findings, a project map showing any cultural site locations recorded, copies of all state site survey forms, a project development clearance request where appropriate, and any recommendations for further work. The report should conform with the guidelines for report preparation of the Council of Texas Archeologists. In cases where the scope and/or results of a particular investigation warrant a comparatively lengthy report requiring more than 45 [~~30~~] days to prepare, TWDB staff archeologists will send a brief interim report notifying AD [~~DAP~~] of the findings of the investigation and proposed dates for the completion and submittal of the final report to AD [~~DAP~~].

(4) AD [~~DAP~~] is responsible for responding to the report or the interim report, as appropriate, within 30 days of receipt of such report.

(5) For projects involving federal funds, TWDB field investigations will be conducted, where applicable, consistent with the National Historic Preservation Act, §106, the Secretary of the Interior's Guidelines on Archeology and Historic Preservation, the Regulations of the Advisory Council on Historic Preservation (36 Code of Federal Regulations Part 800), and the Texas Antiquities Code.

(6) A draft annual report summarizing the past calendar year's investigations under each yearly permit will be submitted to AD [~~DAP~~] by April 1 of the following year. Each project investigation report within the annual report will be concise, but informative, and include the same levels of data required under the rule provisions of 13 TAC §26.24 [~~§41.24~~].

(7) Once the draft annual report is approved by AD [~~DAP~~], TWDB will submit 20 copies of the final annual report to AD [~~DAP~~] no later than 90 days after TWDB has received AD's [~~DAP's~~] approval of the draft report. The final annual report should be in a form that conforms to 13 TAC §26.24 [~~§41.24(a)~~], pertaining to Archeological Permit Reports.

(8) Copies of field notes, maps, sketches, and daily logs, as appropriate, will be submitted to AD [~~DAP~~] along with the annual report. Where duplicates are impractical, originals may be submitted for microfilming. Upon completion of microfilming, originals will be returned to TWDB.

(9) During preservation, analysis, and report preparation or until further notice by AD [~~DAP~~], artifacts, field notes, and other data gathered during investigations will be kept temporarily at the TWDB. Upon completion of annual reports, the same artifacts, field notes, and other data will be placed in a permanent curatorial repository at the Texas Archeological Research Laboratory, the University of Texas at Austin, or other AD [~~DAP~~]-approved repository [~~, at no cost to the TWDB~~].

(10) Should the staff archeologist positions at the TWDB be eliminated, TWDB remains responsible for contracting with an individual who meets the requirements of subsection (b)(1) of this section to serve as principal investigator to complete the year-end report to the AD [~~DAP~~].

(11) The TWDB and/or its applicants for financial assistance may find that a particular project is so extensive or under such constraints of time and need that it is more efficient and effective for the archeological or related investigations to be conducted by a qualified archeologist under contract to the applicant. In such instances, the investigations will require a project specific antiquities permit to be obtained by the contracting archeologist.

(12) The following general procedures shall apply for investigation of all projects, including but not limited to the construction of water treatment and storage facilities, wastewater and sludge treatment and disposal facilities, water distribution and wastewater collection facilities, flood control modifications, municipal solid waste facilities, and reservoirs proposed to receive financial assistance from TWDB. Subject to those exceptions outlined below, the complete project will be investigated.

(A) Archival research will be conducted at the Texas Archeological Research Laboratory, the University of Texas at Austin, and other facilities, as appropriate, to determine what cultural resources have been previously recorded in the vicinity of all proposed project construction areas. If the project can be shown to be in areas which have been extensively disturbed by previous development and/or unlikely to contain intact or significant cultural resources, then, based upon this initial review and information provided by the applicant for financial assistance, TWDB may request the AD [~~DAP~~] to allow the project to proceed to construction without further investigation.

(B) When field investigations are determined to be necessary by TWDB or stipulated by AD [~~DAP~~] review, the field methodology shall include pedestrian survey of all project areas unless preliminary inspection determines that a particular project area has been substantially altered or is physiographically situated such that it appears highly unlikely that significant cultural resources occur in the area. Appropriate to the type of project and location, TWDB archeologists may undertake limited subsurface probing in the form of mechanical or limited manual excavations in order to identify and/or evaluate buried cultural remains. When field investigations reveal that no significant cultural resources are located in the proposed project areas and, in the opinion of the principal investigator, no damage to significant cultural resources is anticipated, as reflected in a written report to AD [~~DAP~~], the project implementation will be allowed to proceed, subject to AD [~~DAP~~] concurrence with the recommendation under subsection (b)(4) of this section. In cases where historic and/or prehistoric cultural resources are found in the vicinity of proposed construction areas, the principal investigator will assess the significance of the resources and make recommendations for avoidance, testing, or mitigation of potentially significant resources, as appropriate, in the reports on the investigations. Decisions will be based upon the need to conserve cultural resources without unduly delaying the progress of project implementation.

(13) TWDB will ensure that it does not release funds for political subdivision construction prior to disposition, or formally agreed to disposition, of archeological and/or historical resources in accordance with AD [~~DAP~~]-approved reports referenced in paragraphs (3), (4), (5), and (11) of this subsection. Conditions of the TWDB financial assistance will provide, consistent with §26.11(4) [~~§41.8(b)~~] of THC [~~TAC~~] rules, that if an archeological site is discovered during project implementation, work will cease in the area of the discovery, the site will be protected, and the discovery will be reported immediately to the THC [~~Texas Historical Commission~~].

(14) Any member or agent of AD [~~DAP~~] may, with timely notice to TWDB, inspect TWDB investigations in progress subject to the provisions of the MOU and the yearly permit issued to TWDB by AD [~~DAP~~].

(15) Said yearly permit is authorization for reconnaissance and 100% pedestrian survey and/or limited subsurface probing of areas of less than 300 acres when one TWDB staff archeologist is to conduct the investigation. When investigations of areas greater than 300

acres are proposed, TWDB shall consult with AD [~~DAP~~] regarding the need for a project specific permit. The investigation of tracts larger than specified above may require project-specific antiquities permits regardless of whether the TWDB has them performed by staff archeologists or by contract with other qualified archeologists. The above limitations do not apply to proposed pipeline or other linear construction projects wherein the total area to be examined may cumulatively exceed the acreage limitations.

(16) Advanced archeological investigations such as archeological testing or mitigative archeological excavations are not covered under the yearly permits, and any such investigation deemed necessary by AD [~~DAP~~] will require a project-specific antiquities permit.

(17) All conditions listed in the permit form remain unaltered by these guidelines.

(c) Permits. An antiquities permit is to be issued for each calendar year that this agreement is in effect with the stipulation that the responsibilities as outlined above are to be observed. Failure to comply with the provisions of this MOU could result in cancellation of the yearly permits at the discretion of AD [~~DAP~~]. The results of the investigations will be evaluated at the end of each permit period. A new permit will be automatically issued to TWDB by AD [~~DAP~~] by January 15 of each calendar year, assuming all conditions of the previous permit and this MOU have been met.

(d) Term. This memorandum of understanding will remain in full force and effect until canceled by the written notice of either party. The MOU may be amended by mutual written agreement between TWDB and AD [~~DAP~~].

*§354.4 Memorandum of Understanding Between Texas Water Development Board and The Office of Rural Community Affairs.*

(a) Recitals.

(1) Pursuant to the 1995 Appropriations Act of the Texas Legislature, and continued in the 2003 [~~1997 and 1999~~] Appropriations Act of the Texas Legislature, the Texas Water Development Board (TWDB) and the Texas Department of Housing and Community Affairs (TDHCA) were required to develop a Memorandum of Understanding (Memorandum) to detail the responsibility of each agency regarding the coordination of funds of the Economically Distressed Areas Program (EDAP), administered by the TWDB, and the Colonia Fund of the Community Development Block Grant Program, administered by the TDHCA, so as to maximize delivery of the funds and minimize administrative delay in their expenditure. The TWDB and the TDHCA executed a Memorandum and performed pursuant to the terms of that Memorandum.

(2) [~~Pursuant to the 2001 General Appropriations Act of the 77th Texas Legislature, the TWDB is required to continue the coordination with the TDHCA that commenced under the Memorandum with TDHCA.~~] Pursuant to Chapter 487 of the Texas Government Code [~~House Bill 7 (H.B. 7) of the 77th Texas Legislature~~], the Office of Rural Community Affairs (OFFICE) [~~(ORCA)~~] was created and the functions and obligations of TDHCA related to the Colonia Fund were transferred to the OFFICE [~~ORCA~~] including the requirement to execute a Memorandum of Understanding to detail the responsibility of each agency regarding the coordination of funds out of the EDAP, administered by the TWDB, and the Colonia Fund of the Community Development Block Grant Program, now administered by OFFICE [~~ORCA~~].

(b) Parties. This Memorandum is made and entered into between the OFFICE [~~ORCA~~], an agency of the State of Texas, and the TWDB, an agency of the State of Texas.

(c) Purpose. The purpose of this Memorandum is to assure that none of the funds appropriated under the Colonia Fund are expended in a manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of the EDAP operated by the TWDB, so as to maximize delivery of the funds and minimize administrative delay in their expenditure.

(d) Period of performance. This Memorandum shall begin on September 1, 2003 [~~December 1, 2002~~], and shall terminate on August 31, 2005 [~~2003~~]. This Memorandum may be extended for an additional period of time to ensure compliance with the OFFICE's [~~TDHCA~~] Rider No. 3 [~~4~~], the responsibility for which was assigned to the OFFICE [~~ORCA~~] by Chapter 487 of the Texas Government Code [~~H.B. 7,~~] and the TWDB Rider No. 7 to the General Appropriations Act, 78th [~~77th~~] Legislature for the 2004-2005 [~~2002-2003~~] Biennium.

(e) Performance. Each party to this Memorandum shall coordinate with the other in delivering water and sewer service lines, hook-ups, and plumbing improvements to residents of selected colonias in order to connect those residents' housing units to EDAP-funded water and sewer systems.

(1) OFFICE [~~ORCA~~] responsibilities. The OFFICE [~~ORCA~~] shall be responsible for the following functions:

(A) develop an application process for projects submitted by eligible units of local government;

(B) assist units of general local government in preparing an application to the Colonia Fund;

(C) determine whether projects meet federal requirements;

(D) select projects to receive funding in conjunction with the TWDB;

(E) make Colonia Fund grant awards for selected projects on an as-needed basis;

(F) prepare and execute contracts with units of general local government (Contractor localities);

(G) provide oversight and guidance to Contractor localities regarding applicable federal and state laws and program regulations (environmental, labor, acquisition of real property, relocation, procurement, financial management, fair housing, equal employment opportunity, etc.);

(H) provide on-site technical assistance if necessary to ensure that funds are efficiently and effectively used to accomplish the activities for which they were intended;

(I) review, approve, process, and honor valid reimbursement requests from Contractor localities;

(J) monitor each project prior to contract completion to ensure compliance with applicable federal and state laws and program regulations;

(K) consult with the TWDB regarding specific projects on an as-needed basis; and

(L) notify communities on list provided by the TWDB of the availability of funds.

(2) TWDB responsibilities. The TWDB shall be responsible for the following functions:

(A) provide the OFFICE [~~ORCA~~] with descriptions of and schedules for EDAP-funded projects that need Colonia Fund assistance to provide connections and plumbing improvements at least six (6) weeks before such assistance would be required;

(B) assist eligible units of general local government in preparing an application for assistance through the OFFICE's [~~ORCA's~~] Colonia Fund;

(C) select projects to receive funding in conjunction with the OFFICE [~~ORCA~~]; and

(D) provide assistance with technical project-related concerns brought forward by Contractor localities or the OFFICE [~~ORCA~~] during the course of the project.

(f) Limitations. Eligible applicants shall be those counties eligible under both OFFICE's [~~ORCA's~~] Colonia Fund and TWDB's EDAP. Non-entitlement cities located within eligible counties are also eligible applicants. Eligible projects shall be located in unincorporated colonias identified by the TWDB and in eligible cities that annexed the colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. Eligibility shall be denied to any project in a county that has not adopted or is not enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code. If there is an insufficient number of TWDB EDAP projects ready for Colonia Economically Distressed Areas Program (CEDAP) funding within 12 months after the OFFICE receives the federal letter of credit, the CEDAP funds may be transferred at the OFFICE's discretion as stated within the current Community Development Block Grant action.

(g) Reporting requirements. Each party to this Memorandum shall submit, on or before the fifteenth day of the month following the end of the calendar quarter, to the other party a report of its activities and expenditures during the previous calendar quarter. The first such report shall be due January 15, 2004 [~~2003~~]. No later than December 15, 2004, the OFFICE and the TWDB shall submit a joint report to the Legislative Budget Board that describes and analyzes the effectiveness of projects funded as a result of coordinated Colonia Fund/EDAP efforts.

(h) Termination. This Memorandum shall terminate upon ten (10) days written notice by either party to the other party in this 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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306775
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: December 17, 2003
For further information, please call: (512) 475-2052

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# CHAPTER 365. INVESTMENT RULES

The Texas Water Development Board (the board) proposes amendments to 31 TAC §§365.2 and 365.11 concerning Investment Rules. The amendments are proposed for clarification of the rules to include provisions resulting from legislative action affecting the rules, and compliance with the Public Funds Investment Act (PFIA), Government Code, Chapter 2256.

The board proposes to amend §365.2 concerning Definitions of Terms. The amendment to §365.2(5) will delete the entire item. The development fund manager is not mentioned in the investment rules therefore no definition is needed. Section 365.2(9) is proposed to delete "Audit and Funds Management Director " and replace with "Chief Financial Officer". As a result of reorganization, effective September 1, 2003, the Investment Officer duties were transferred to the Chief Financial Officer.

Section 365.11 is proposed to delete "finance committee" and replace with "board". This change results from committee responsibility discussions during the August 2003 Board work session.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect, there will not be fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Callahan has also determined that for the first five years the sections, as proposed, are in effect, the public benefit anticipated as a result of enforcing the sections will be clarity and simplification in the administration for the board's investment activities. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendment will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Attorney, General Counsel Office, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax at (512) 463-5580.

## SUBCHAPTER A. GENERAL PROVISIONS

**31 TAC §365.2**

The amended sections are proposed under the authority of the Texas Water Code §6.101, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and the Texas Government Code, Chapters 2256 and 2257, which requires each State agency to adopt rules regarding the investment of its funds.

There are no statutory provisions affected by the proposed amendments.

*§365.2. Definitions.*

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Authority--The Texas Water Resources Finance Authority.

(2) Authorized dealers--Those dealers who have been approved to do business with the board and authority.

(3) Board--The Texas Water Development Board.

(4) Dealer--A business organization offering to engage in an investment transaction with the board or authority.

[~~(5) Development fund manager--The development fund manager of the Texas Water Development Board or a designated representative.~~ ]

(5) [~~(6)~~]Executive administrator--The executive administrator of the Texas Water Development Board or a designated representative.

(6) [~~(7)~~] HUB--Historically Underutilized Business (HUB) that is currently certified by the Texas Building and Procurement Commission as a HUB.

(7) [~~(8)~~] Internal auditor--The Director of Internal Audit employed by the Texas Water Development Board.

(8) [~~(9)~~] Investment officer--The Chief Financial Officer [~~Audit and Funds Management Director~~] of the Texas Water Development Board or any other person authorized by the board or executive administrator to invest funds of the board or authority.

(9) [~~(10)~~] Portfolio--The investments held by the Texas Water Development Board or the Texas Water Resources Finance Authority.

(10) [~~(11)~~] Primary dealer--A dealer that provides a complete market in United States Treasury securities and that reports to the Federal Reserve Bank of New York.

(11) [~~(12)~~] Qualified representative--A person who holds a position with a business organization, who is authorized to act on behalf of the business organization, and who is one of the following:

(A) for a business organization doing business that is regulated by or registered with a securities commission, a person who is registered under the rules of the National Association of Securities Dealers;

(B) for a state or federal bank, a savings bank, or a state or federal credit union, a member of the loan committee for the bank or branch of the bank or a person authorized by corporate resolution to act on behalf of and bind the banking institution; or

(C) for an investment pool, the person authorized by the elected official or board with authority to administer the activities of the investment pool to sign the written instrument on behalf of the investment pool.

(12) [~~(13)~~] Secondary dealer--A dealer that specializes in various investment markets but is not monitored by the Federal Reserve Bank of New York.

(13) [~~(14)~~] U.S. government agencies--The Federal Home Loan Bank, the Federal National Mortgage Association and the Government National Mortgage Association.

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 October 15, 2003.

TRD-200306773
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: December 17, 2003
For further information, please call: (512) 475-2052

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## SUBCHAPTER B. SELECTION OF AUTHORIZED DEALERS

**31 TAC §365.11**

The amended sections are proposed under the authority of the Texas Water Code §6.101, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and the Texas Government Code, Chapters 2256 and 2257, which requires each State agency to adopt rules regarding the investment of its funds.

There are no statutory provisions affected by the proposed amendments.

*§365.11. Authorized Dealers.*

The investment officer will invest funds through the use of banks and broker/dealers which are approved as authorized dealers. A list of authorized dealers will be maintained by the investment officer. The board [~~finance committee~~] will review, revise and adopt, at least annually, a list of qualified brokers that are authorized to engage in investment transactions with the board. All primary dealers and secondary dealers requesting qualification as an authorized dealer must submit all of the following information, if applicable, to the investment officer:

(1) name, address, telephone number, and contact person of the dealer which would like to do business with the board or authority;

(2) most current audited financial statements showing the net capital of the dealer which clears the securities or if entity is a subsidiary, financial statements for the entity and the parent company;

(3) years of experience and the type of securities that the dealer primarily trades;

(4) proof that the dealer is registered in Texas through National Association of Securities Dealers, Texas State Securities Board, or the Comptroller of the Currency;

(5) references from investment activity in Texas and one reference from the state in which the dealer has its principal place of business; and

(6) proof that the dealer qualifies as a HUB.

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 October 15, 2003.

TRD-200306774
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: December 17, 2003
For further information, please call: (512) 475-2052

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## CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (board) proposes amendments to 31 TAC Chapter 375 concerning the Clean Water State Revolving Fund. Proposed amendments to §§375.17 and 375.52 and the creation of proposed new §§375.19, 375.20, and 375.21 relate to the availability and use of Clean Water State Revolving Funds for projects that will provide service to disadvantaged communities.

The proposed amendments to §375.17 adds required information to be included in the fiscal year 2005 intended use plan for projects which propose service to disadvantaged communities as defined in the proposed new §375.19. New §375.19(a) is proposed to specify new authority for the board to provide low interest loans to political subdivisions that are either themselves disadvantaged, as later defined, or that will be providing wastewater service to areas outside the applicants' current service area that meet the definition of a disadvantaged community. Proposed new §375.19(b)(1) establishes that a disadvantaged community includes both the community that is currently disadvantaged or one that becomes disadvantaged as the result of a project. A community that achieves the income criteria meeting the definition of disadvantaged as the result of a project is deemed as much in need of subsidy as the community that is currently disadvantaged. Proposed new §375.19(b)(2) uses two criteria to define a disadvantaged community: adjusted median household income and household affordability factors. The adjusted median household income is a measure of the income levels of residents of the area. Similar income criteria are used in the Drinking Water State Revolving Fund (DWSRF) and the Economically Distressed Areas Program (EDAP), both of which are administered by the board, so that its use fosters consistency between board programs. Further, the board finds that the adjusted median household income is information that is readily available, is easily verified and is indicative of the current economic situation of the community. The 25% income threshold is a measure already used by the board to establish eligibility for the EDAP as required by Texas Water Code, §16.341(1).

Household affordability factors were used as the other criteria in proposed new §375.19(b)(2) to define a disadvantaged community because the factors measure whether a project is affordable to the customers of the system. The household affordability factors indicate the capacity of the customers to support the cost of water and/or wastewater service, including debt service, through user charges. If the water or combined water and sewer bill exceeds a certain percentage of the adjusted median household income, then the project would not be affordable to the community without assistance from this program. The percentage of the average water or combined water and sewer bill to median household income, which is defined in proposed new §375.19(b)(3), is a methodology used by other states in developing affordability guidelines as well as the federal government in determining affordability of projects. The 1.0% for water rates used in proposed new §375.19(b)(2)(A) is the percentage used by the Environmental Protection Agency in its User Manual for the Municipality's Ability to Pay Computer Model. The 2.0% for water and sewer rates in proposed new §375.19(b)(2)(B) was used because it was recognized that the additional cost of sewer services impacts the ability of customers to pay for a new project and this percentage was used by another state in developing its affordability guidelines. Proposed new §375.19(b)(4) defines combined household cost factor, which combines the average yearly water bill with the average yearly wastewater bill and divides the total by the average median household income.

Proposed new §375.19(b)(5) and (6) define the term average yearly water and sewer bill, respectively, which are used in defining disadvantaged community. The average yearly water bill is calculated by applying the community's rate structure to the average number of gallons of water used in-house per year by the average occupied household. Identification of the rate on a per gallon basis accounts for the different usage rates between water systems thereby creating a common measure when analyzing the percentage of the water or combined water and sewer bill to the adjusted median household income. The number identified as the average gallons used in an individual residence for water and sewer in proposed new §375.19(b)(5) and (6) is the estimated state-wide average of domestic water that enters a household and returns via the sewer system, based on data submitted by political subdivisions and compiled by the Texas Commission on Environmental Quality. Proposed new §375.19(b)(7) identifies the method by which median household income is to be identified. It uses the most recent census data and requires that it be adjusted to bring the median income to current income levels. The board recognizes that some utility providers supplement the rate revenue with other sources of revenue such as operation and maintenance taxes or surcharges which has the effect of offsetting an affordability determination made solely based on the utility rates. Therefore, the board also proposes new §375.19(b)(8) which allows an applicant to include in the affordability determination such other sources of revenue as may be used by the utility in providing service.

Proposed new §375.19(c) identifies the interest rates that will be charged for loans for projects that serve disadvantaged communities. Proposed new §375.19(c)(1) provides an interest rate determined by the percentage of the system's adjusted median household income to the state median household income. The initial 75% threshold is consistent with the eligibility threshold for the board's Economically Distressed Areas Program. Using the basic premise that the lower the median household income of the system, the less that the system can repay, a sliding scale of subsidies was created using two interest rates with greater subsidies going to systems with lower adjusted median household incomes. This approach mirrors the interest rate subsidies provided by the board through the Disadvantaged Community Program of the Drinking Water State Revolving Fund. Unlike the DWSRF, the Clean Water State Revolving Fund can only provide low interest loans and cannot provide any loan forgiveness. Consequently, the proposed new rule offers loans with 1.0% interest rate for projects serving areas in which the adjusted median household income for the service area is between 75% and 70% of the median state household income and loans with a 0.0% interest rate, if the adjusted median household income for the service area is less than or equal to 70%.

Proposed new §375.19(d) provides that if the cost of the project exceeds the estimated cost as listed on the Intended Use Plan, then the additional cost will be funded through the Financial Assistance Account of the Texas Water Development Water Fund. Due to the limited availability of funds available for disadvantaged communities and the identification of projects through an intended use plan, funding unanticipated project costs would dissipate funds for applicants that had been notified of the availability of funds. Consequently, the proposed new rule provides that alternative financial assistance will be used for costs in excess of the estimated project cost identified in the intended use plan.

Proposed new §§375.20 and 375.21 set up alternative procedures for identifying projects that may be eligible for funds made available for disadvantaged communities. Due to the funding availability under the capitalization grant application process with the U. S. Environmental Protection Agency, the 2004 Project Priority List (PPL) has already been prepared and been the subject of the public hearing process pursuant to federal regulation. New §375.20 proposes using the PPL that has already been prepared for fiscal year 2004. New §375.21 proposes that projects that

may be eligible to receive disadvantaged community funds be identified on the PPL starting in fiscal year 2005 and for all subsequent fiscal years.

New §375.20(a) proposes that the board identify the amount of funds that will be made available for projects that serve disadvantaged communities. An initial determination of the capacity of the Clean Water State Revolving Fund must be made as the first step in identifying projects that may be eligible to receive these funds. New §375.20(b) proposes the procedure for potentially eligible applicants to receive notification of the availability of funds. Once the board determines the amount of funds available, the executive administrator identifies only those projects already on the PPL starting in Category A, as proposed in new §375.20(b)(1). This proposed new paragraph proposes that the executive administrator identify all the projects in Category A in priority order which, if funded, would not exceed the total amount of funds determined by the board to be available for projects serving disadvantaged communities. New §375.20(b)(2) proposes that if the total estimated project costs for all projects in Category A does not exceed all the funds available for disadvantaged communities, then the executive administrator will identify the projects in Category B in priority order which if funded in conjunction with the funding of the projects in Category A would not exceed the total amount of funds determined by the board to be available for projects serving disadvantaged communities. New §375.20(b)(3) proposes that if the total estimated project costs for all projects in Category A and B does not exceed all the funds available for disadvantaged communities, then the executive administrator will identify the projects in Category C in priority order which if funded in conjunction with the funding of the projects in Category A and B would not exceed the total amount of funds determined by the board to be available for projects serving disadvantaged communities. The prioritization of projects in this manner is intended to provide the smallest communities with adequate capital to reach the critical capital mass necessary for a sustainable wastewater utility system. Only when the smallest communities (Category A covers potential applicants with existing populations of 3,000 or fewer) have had full access to these funds, then the executive administrator will determine the extent to which these funds may be available to communities with existing populations of 3,001 to 10,000 (Category B), then communities with 10,001 to 25,000 population (Category C). Proposed new §375.20(b)(3) makes these funds available only through Category C because utilities serving communities with populations greater than 25,000 have sufficient revenues and customer bases to sustain the necessary infrastructure for their systems by accessing the funds available through either the remaining portions of the Clean Water State Revolving Funds or other available capital markets.

Upon identification of the projects following the procedures set forth in proposed new §375.20(b)(1) - (3) and §375.20(b)(4) would require the executive administrator to provide written notification to the applicant associated with each identified project of the availability of funds, invite the submission of an application, and notify the applicant of the deadline for the submission of an application. New §375.20(c) proposes that the only way for an eligible political subdivision to receive these funds is to respond to the invitation within three months of the date of notification. This deadline is proposed because the limited availability of the funds together with the federal funding cycle requires that the funding decisions be made within the fiscal year. If a particular applicant is not prepared to apply for these funds, then there are other applicants who should be given the opportunity to apply. This proposed new subsection also would provide that the required response is the submission of an application for assistance, as defined in §375.2(6), together with the information that the applicant believes the board should consider in determining the eligibility of the project for these funds. Further, this proposed new subsection requires the executive administrator provide written notification that an application has been received and may request additional information in order that the applicant is apprised of the applicable timelines and requirements. Finally, this proposed new subsection would provide that an applicant must receive a commitment within three months of the submission of an application. As before, a deadline is proposed because the limited availability of the funds together with the federal funding cycle requires that the funding decisions be made within the fiscal year. If an application has not completed or otherwise is not approvable by the board, then there are other applicants that should be given the opportunity to receive a commitment.

New §375.20(d) proposes that a political subdivision that receives notice of the availability of funds that does not submit an application or receive a commitment within the specified time lines will have its project re-ranked and moved to the bottom of the PPL in the category in which it was ranked. It is proposed that new §375.20(e) require that, three months after the notice of available disadvantaged community funds has been sent, the executive administrator determine if the amount of funds requested by all the complete applications submitted to that point in time is less than the funds available for disadvantaged communities. If the amount requested in completed applications is less than the funds that are available for disadvantaged communities, then the executive administrator will return incomplete applications and change the priority project list to move the projects for which incomplete or no application has been submitted to the bottom of the list.

It is proposed that new §375.20(f) provide that upon the re-ranking of projects in proposed new §375.20(e), the executive administrator identify the projects from the PPL according to the process identified in proposed new §375.20(b) and which have not previously received a notice of availability funds. Proposed new §375.20(g) would require that the executive administrator provide to the political subdivision associated with the projects thus identified written notice of the availability of funds, an invitation to submit an application for assistance, and the deadline for the submission of the application. Proposed new §375.20(h) would provide that in order for the political subdivision to receive these funds, it must file an application according to board rules within three months of the date of notification and receive a loan commitment from the board within three months of the date of the submission of the application. New §375.20(i) is proposed to require that the executive administrator, three months after the second notice of availability of funds has been sent, determine if the applications submitted to that point in time, if approved by the board, would use all of the funds available for disadvantaged communities. Further, proposed new §375.20(i) would provide that if there are excess any funds identified, the executive administrator will return incomplete applications and the excess funds may be made available for projects in disadvantaged communities in the application process of the next fiscal year.

New §375.20(j) proposes that any political subdivision receiving notice of the availability of funds can let the executive administrator know, in writing, that it does not intend to apply for these funds. Under this proposed new subsection, the executive administrator can proceed immediately to identify the next project

on the PPL that could apply for the funds and that has not previously received notice of funds availability. Further, this proposed new subsection would provide that upon identifying the next project on the PPL, the executive administrator would provide the political subdivision associated with such project with written notice of the availability of funds, an invitation to submit an application for assistance, and the deadline for the submission of an application. Proposed new §375.20(k) would require these political subdivisions to submit an application within three months of receiving the notice and require that the applicant receive a commitment within three months of submitting the application.

Proposed new §375.20(l) would provide that applicants not receiving a commitment within three months would have their projects moved to the bottom of the PPL. This proposed new subsection also would provide that any funds available for disadvantaged communities and not used for such projects would be made available for disadvantaged communities in the next fiscal year. In this manner, the proposed rules would provide reasonable opportunity for projects on the PPL to receive funding in priority order as expeditiously as possible.

New §375.21 proposes that projects that may be eligible to receive disadvantaged community funds be identified as potentially disadvantaged community projects on the PPL starting in fiscal year 2005 and for all subsequent fiscal years. New §375.21(a) proposes that the board annually identify the amount of funds that will be made available for projects that serve disadvantaged communities. An annual determination of the capacity of the Clean Water State Revolving Fund must be made as the first step in identification projects that may be eligible to receive these funds. New §375.21(b) proposes that once the board determines the amount of funds, the executive administrator identify the projects on the PPL starting in Category A that have submitted information indicating the community meets the definition of disadvantaged. This new §375.21(b) proposes that the executive administrator identify all the projects which are shown as serving disadvantaged communities in Category A in priority order which, if funded, would not exceed the total amount of funds determined by the board to be available for projects serving disadvantaged communities. New §375.21(b)(2) proposes that if the total estimated project costs for all projects in Category A shown as serving a disadvantaged community does not exceed all the funds available for disadvantaged communities, then the executive administrator will identify the projects shown as serving disadvantaged communities in Category B in priority order which if funded in conjunction with the funding of the projects in Category A would not exceed the total amount of funds determined by the board to be available for projects serving disadvantaged communities. New §375.21(b)(3) proposes that if the total estimated project costs for all projects shown as serving disadvantaged communities in Category A and B does not exceed all the funds available for disadvantaged communities, then the executive administrator will identify the projects shown as serving disadvantaged communities in Category C in priority order which if funded in conjunction with the funding of the projects in Category A and B would not exceed the total amount of funds determined by the board to be available for projects serving disadvantaged communities. The prioritization of projects in this manner is intended to provide the smallest communities with adequate capital to reach the critical capital mass necessary for a sustainable wastewater utility system. Only when the smallest disadvantaged communities (Category A covers potential applicants with existing populations of 3,000 or fewer) have had full access to these funds then the executive administrator will determine the extent to which these funds may be available to communities with existing populations of 3,001 to 10,000 (Category B), then communities with 10,001 to 25,000 population (Category C). Proposed new §375.21(b) makes these funds available only through Category C because utilities serving communities with populations greater than 25,000 have a sufficient revenues and customer bases to sustain the necessary infrastructure for their systems by accessing the funds available through either the remaining portions of the Clean Water State Revolving Fund or other available capital markets.

Upon identification of the projects following the procedures set forth in proposed new §§375.21(b)(1) - (3) and §375.21(b)(4) would require the executive administrator to provide written notification to the applicant associated with each identified project of the availability of funds, invite the submission of an application, and notify the applicant of the deadline for the submission of an application. New §375.21(c) proposes that the only way for an eligible political subdivision to receive these funds is to respond to the invitation within three months of the date of notification. This deadline is proposed because the limited availability of the funds together with the federal funding cycle requires that the funding decisions be made within the fiscal year. If a particular applicant is not prepared to apply for these funds, then there are other applicants that should be given the opportunity to apply. This proposed new §375.21(c) also would provide that the required response is the submission of an application for assistance, as defined in §375.2(6), together with the information that the applicant believes the board should consider in determining the eligibility of the project for these funds. Further, this proposed new §375.21(c) would require the executive administrator to provide written notification that an application has been received and may request additional information in order that the applicant is apprised of the applicable timelines and requirements. Finally, this proposed new §375.21(c) would provide that an applicant must receive a commitment within three months of the submission of an application. As before, a deadline is proposed because the limited availability of the funds together with the federal funding cycle requires that the funding decisions be made within the fiscal year. If an application has not completed or otherwise is not approvable by the board, then there are other applicants that should be given the opportunity to receive a commitment.

New §375.21(d) proposes that a political subdivision that receives notice of the availability of funds that does not submit an application or receive a commitment within the specified time lines will have its project re-ranked and moved to the bottom of the PPL in the category in which it was ranked. It is proposed that new §375.21(e) require that, three months after the notice of available disadvantaged community funds has been sent, the executive administrator determine if the amount of funds requested by all the complete applications submitted to that point in time is less than the funds available for disadvantaged communities. If the amount requested in completed applications is less than the funds that are available for disadvantaged communities, then the executive administrator will return incomplete applications and change the priority project list to move the projects for which incomplete or no application has been submitted to the bottom of the list.

It is proposed that new §375.21(f) provide that upon the re-ranking of projects in proposed new §375.21(e), the executive administrator identify the projects from the PPL according to the process identified in proposed new §375.21(b) and which have not previously received a notice of availability funds. Proposed new §375.21(g) would require that the executive administrator provide to the political subdivision associated with the projects thus identified with written notice of the availability of funds, an invitation to submit an application for assistance, and the deadline for the submission of the application. Proposed new §375.21(h) would provide that in order for the political subdivision to receive these funds, it must file an application according to board rules within three months of the date of notification and receive a loan commitment from the board within three months of the date of the submission of the application. New §375.21(i) is proposed to require that the executive administrator, three months after the second notice of availability of funds has been sent, to determine if the applications submitted to that point in time, if approved by the board, would use all of the funds available for disadvantaged communities. Further, this new proposed subsection would provide that if there are excess any funds identified, the executive administrator will return incomplete applications and the excess funds may be made available for projects in disadvantaged communities in the application process of the next fiscal year.

New §375.21(j) proposes that any political subdivision receiving notice of the availability of funds can let the executive administrator know, in writing, that it does not intend to apply for the funds. Under this proposed new subsection, the executive administrator can proceed immediately to identify the next project on the PPL that could apply for the funds and that has not previously received notice of funds availability. Further, this subsection would provide that upon identifying the next project on the PPL, the executive administrator would provide the political subdivision associated with such project with written notice of the availability of funds, an invitation to submit an application for assistance, and the deadline for the submission of an application. Proposed new §375.21(k) would require these political subdivisions to submit an application within three months of receiving the notice and require that the applicant receive a commitment within three months of submitting the application. Proposed new §375.21(l) would provide that applicants not receiving a commitment within three months would have their projects moved to the bottom of the PPL. This proposed new subsection also would provide that any funds available for disadvantaged communities and not used for such projects would be made available for disadvantaged communities in the next fiscal year. In this manner, the proposed rules would provide reasonable opportunity for projects on the PPL to receive funding in priority order as expeditiously as possible.

Proposed amendments to §375.52 revise the rule to provide the methodology for setting interest rates for all loans under the chapter and include the method for determining the interest rates charged for loans with a debt service schedule in excess of twenty years and when the annual debt service payments are not level through the term of the bonds.

The proposed amendments to §375.52 include new subsection (a) to insert definitions for terms commonly used in the section. The term "average life" is included as a necessary component of the methodology used to calculate the loan interest rate to be set by the executive administrator in this section. The average life is defined as the number that results from dividing the sum of the payment periods of all maturities of a loan by the principal amount of the loan. The term "borrower" is used to refer to eligible applicants that have received a commitment for financial assistance from the Clean Water State Revolving Fund (CWSRF). The term "Delphis" is defined as the Delphis Hanover Corporation Range of Yield Curve Scales in order to identify the source of information that the board will use to identify the market cost of funds to a borrower. The board will use the Delphis because it is a standard recognized in the financial services industry for determining the market cost of funds. The term "loan interest rate" is used to identify the rate of interest that the board will charge a borrower for a loan from the CWSRF. Since financial assistance is provided by the purchase of a series of bonds or a loan agreement that identifies specific amounts to be repaid on specific dates, loan interest rate is defined as the series of interest rates that the board will charge for each bond in the borrower's bond series or for each principal payment in the loan agreement. The term "market rate" is defined since the loan interest rate will be determined in relation to the borrower's cost to acquire funds on the open market, which is determined by reference to the Delphis. The term "payment period" is included as a necessary component in determining the average life. It is the number that is determined by multiplying the maturity principal amount of each bond in the series or each maturity in the loan agreement by the standard period for such loan. The term "standard period" is defined because it is a necessary component in the calculation of average life. It is the number of days between the delivery of funds from the board to the borrower and the maturity date of a principal payment, calculated on the basis of a 360-day year composed of twelve 30-day periods, divided by 360.

Current §375.52(a) is amended to be subsection §375.52(b). Subsection §375.52(b)(1)(A) is amended to include the term loan agreements because loan agreements are an available option to which this subsection should apply. Otherwise no other amendments are proposed to this subsection. Current §375.52(b) is restructured as §375.52(c) and completely replaced with new language to clarify the current procedure implemented by the board as well as to include additional methodologies to be used by the executive administrator for a loan for which the annual debt service schedule is not level. The first sentence currently provides that the loan interest rate is set at exactly 70 basis points below the fixed rate index rates. As a practical matter, a uniform rate exactly 70 basis points below the fixed rate index rates may result in annual debt service payments from the borrower becoming not substantially level, which could impair the ability of the board to meet its debt service obligations. Therefore, it is necessary to recognize that the executive administrator is authorized to make adjustments to the loan interest rate to insure a level debt service. To aid in the organization of this section, the statement about the reduction in interest rates is moved to proposed new §375.52(c)(2). Also, the rule is amended to refer to market rate rather than fixed rate index scale, as is currently used, because it is believed that market rate improves the clarity of the rule. A sentence is added to §375.52(c) to summarize the process pursuant to which loan interest rates will be determined in the succeeding subsections.

Proposed new §375.52(c)(1) is included to clearly delineate the existing method of identifying the market rate for the various categories of borrowers but otherwise is not intended as a substantive change. Proposed new §375.52(c)(2) is intended to delineate, without substantive change, that the purpose of the program is provide interest rate reductions for each of two classes of borrowers and the circumstances that create each class. A

provision is added in this subsection to make explicit the current practice of the board that regardless of the amount of the reduction from the market rate, the loan interest rate cannot be less than zero. This restriction is necessary in order to minimize the board's program costs.

Proposed new §375.52(c)(3) identifies two methodologies for setting the loan interest rate. Proposed new §375.52(c)(3)(A) assumes that this method will be applied unless the borrower requests otherwise. Under this new subparagraph, the method for determining the interest rate as currently applied by the board is identified. This new subparagraph now accommodates the need of the board to insure level annual debt service payments even if doing so requires that the interest rate subsidy to be modestly adjusted from the full subsidy anticipated for the borrower. Under this process, the executive administrator determines the average life, as defined, and applies the subsidy to the market rate for the maturity for the year before the year in which the average bond life is reached. If the resulting debt service schedule is level to the satisfaction of the executive administrator, the loan interest rate will have been determined. However, if the resulting debt service schedule is not level to the satisfaction of the executive administrator, this subparagraph then specifically authorizes the executive administrator to adjust the interest rate in any of the maturities in order to insure that the bond repayment schedule is level. This amendment, as well as the amendments in §375.52(c)(3)(B) acknowledges the authority of the executive administrator to determine whether the borrower's proposed debt service schedule is level. The financial services industry recognizes that annual debt service payments need not be exactly equal in order to be considered level. If the annual debt service schedule is not level, the cash flow necessary for the board to repay its obligations under the program may be impaired. Additionally, an un-level debt service structure may cause the amount of the subsidy that would be provided from the CWSRF to increase and potentially compromise the integrity of the fund. However, the degree to which the debt service payments may not be equal yet still remain sufficiently level for the purposes of funds management is a matter of judgement that should reside in the executive administrator. Therefore, in these amendments the determination of whether the debt service payment schedule is level is explicitly assigned to the executive administrator.

Proposed new §375.52(c)(3)(B) identifies the method for determining an interest rate for a borrower that requests principal maturity schedule that does not have level annual debt service payments. This new subparagraph provides that the executive administrator determines the amount of the subsidy that the borrower would have had from a level debt service structure following the procedure identified in §375.52(c)(3)(A) and using the interest rate reduction identified in §375.52(c)(2). The executive administrator then determines the loan interest rate for the debt service schedule requested by the borrower in the manner that as closely as possible provides the same amount of subsidy that would have been provided had the debt service payments been level.

Amendments are proposed to re-letter current subsections (c) and (d) accordingly and to change subsection references contained therein.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these changes are in effect there will be no fiscal implications to state or local government as a result of enforcement and administration of the sections.

Ms. Callahan has also determined that for the first five years the changes as proposed are in effect the public benefit anticipated as a result of implementing the amended sections will be to provide needed capital financing at reduced rates to communities least capable of reaching the objectives of the Clean Water Act. Ms. Callahan has further determined there will be no increased economic cost to small businesses or individuals required to comply with the sections as proposed because the provisions apply only to political subdivisions applying for board assistance.

It is estimated that the rule amendments will not adversely affect local economies because the proposed changes relate only to the level of financial participation of the state in local projects. Indeed, by the state financially contributing to these projects, the local economies should be positively affected.

Comments on the proposed amendments and new sections will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Deputy Counsel, (512) 475-2051, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, or by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

## SUBCHAPTER A. GENERAL PROVISIONS
## DIVISION 2. PROGRAM REQUIREMENTS

**31 TAC §§375.17, 375.19 - 375.21**

Statutory authority: Water Code, §§6.101,15.605.

Cross-reference to statute: Water Code, Chapter 15, Subchapters J; and Chapter 17, Subchapters E and F.

*§375.17. Intended Use Plan.*

(a) (No change.)

(b) The process for listing projects in the intended use plan will be as follows.

(1) Each year the executive administrator will provide written notice and solicit project information from entities desiring to receive funding commitments during the next fiscal year on the basis of that year's intended use plan. The notice will include forms to be used to submit information needed to rate the principal project and the deadline by which rating information must be submitted in order for projects to be rated and included in the intended use plan. The required project information will include:

(A) information needed to rate the project;

(B) a description of the proposed facilities;

(C) the status of any required permit application, including projected effluent limitations;

(D) the estimated total project cost;

(E) an estimated schedule for planning, design and construction of the proposed project;

(F) a statement as to whether the applicant is under enforcement by EPA or the commission; [~~and~~]

(G) beginning with the intended use plan for fiscal year 2005 and all subsequent intended use plans, for those potential applicants with existing populations of 25,000 or fewer, information regarding the eligibility of the area to be served by the project as a disadvantaged community as defined in §375.19; and

(H) [~~(G)~~]such other information as may be requested by the executive administrator.

(2) The required information must be submitted not later than the deadline specified in the written notice to be included in the draft intended use plan. Rating information submitted after the deadline will not be accepted. Incomplete rating information forms may prevent projects from being rated for inclusion in the intended use plan.

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

*§375.19. Financial assistance for projects benefiting disadvantaged communities.*

(a) Eligibility. The board may provide financial assistance in the form of low interest loans through CWSRF program account to a political subdivision:

(1) that is a disadvantaged community; or

(2) that will serve an area that:

(A) is located outside the current service area of the political subdivision; and

(B) meets the definition of a disadvantaged community;

(b) Definition of disadvantaged community.

(1) A community is a disadvantaged community if it meets the definition of a disadvantaged community presently or if as a result of a proposed project, the community becomes a disadvantaged community.

(2) Disadvantaged community means an area in which the project will provide service that has an adjusted median household income which is no more than 75% of the median state household income for the most recent year for which statistics are available; and

(A) if the service area is not charged for sewer services, has a household cost factor for water rates that is greater than or equal to 1.0%; or

(B) if the service area is charged for water and sewer services, has a combined household cost factor for water and sewer rates that is greater than or equal to 2.0%.

(3) The household cost factor is calculated as the average yearly water bill divided by adjusted median household income.

(4) The combined household cost factor is calculated as the average yearly water bill plus the average yearly sewer bill divided by the adjusted median household income.

(5) The average yearly water bill is calculated as the average number of persons per occupied household multiplied by 2,325 gallons per person per month multiplied by the proposed monthly water rate multiplied by 12. The proposed monthly water rate shall include the cost of the proposed project. Any funds for the proposed project received from sources other than the CWSRF shall be deducted from the cost of the project.

(6) The average yearly sewer bill is calculated as the average number of persons per occupied household multiplied by 1,279 gallons per person per month multiplied by the monthly sewer rate multiplied by 12.

(7) The adjusted median household income is calculated as the annual median household income identified in the most recent U.S. Census from the closest applicable census tract multiplied by the current Texas Consumer Price Index divided by the most recent decennial Texas Consumer Price Index. The necessary information will made available through the executive administrator to the applicant.

(8) If taxes, surcharges or other fees are used to subsidize the water and/or sewer system, the average annual amount per household may be included in calculating the household cost factor or the combined household cost factor.

(c) Interest rates and subsidies. Notwithstanding the provisions of §375.52 of this title (relating to Lending Rates), the interest rates for a project eligible for the funds available to disadvantaged communities program will be determined by the provisions of this subsection.

(1) If the adjusted median household income for the service area is between 75% and 70% of the median state household income, the board's financial assistance shall be in the form of a loan with a 1.0% interest rate.

(2) If the adjusted median household income for the service area is less than or equal to 70%, the board's financial assistance shall be in the form of a loan with a 0.0% interest rate.

(d) Additional project costs. If the actual cost of a project funded under this section exceeds the estimated cost of the project as listed on the intended use plan, the additional cost will be funded through the Financial Assistance Account of the Texas Water Development Fund and interest rates for the additional cost will be set according to the provisions of §363.33 of this title (relating to Interest Rates for Loans and Purchase of Board's interest in State Participation Projects).

*§375.20. Criteria and Methods for Distribution of Funds for Disadvantaged Communities for fiscal year 2004 intended use plan.*

(a) For the fiscal year 2004 intended use plan or for an amendment thereto, the board will determine the amount of CWSRF program account funds to be made available for projects that will serve disadvantaged communities and will include this information in such intended use plan.

(b) Notwithstanding §375.15(e), for projects identified on the 2004 intended use plan, or any amendment thereof, upon the determination of the amount of funds available for disadvantaged community projects from capitalization grant reserves, state match, or any other sources, the executive administrator shall:

(1) identify all the projects in Category A in priority order which, if eligible, can receive funds available for disadvantaged communities without exceeding the total amount of funds that are available for disadvantaged communities for the year;

(2) if the total amount of funds available for disadvantaged communities exceeds the total estimated project costs for all projects in Category A, identify all the projects in Category B in priority order which, if eligible, can receive funds available for disadvantaged communities without exceeding the total amount of funds available for disadvantaged communities for the year;

(3) if the total amount of funds available for disadvantaged communities exceeds the total estimated project costs for all projects in Category A and B, identify all the projects in Category C in priority order which, if eligible, can receive funds available for disadvantaged communities without exceeding the total amount of funds available for disadvantaged communities for the year;

(4) provide in writing to all the political subdivisions associated with projects identified in subsection (1), (2), and (3):

(A) notification of the availability of disadvantaged community funds for the project;

(B) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary

and appropriate for the board to determine eligibility of the project for these funds; and

(C) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.

(c) In order to receive funding, political subdivisions receiving notification from the executive administrator of the availability of disadvantaged community funds must submit applications for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds, within three months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of the application after the three month period has expired without affecting the priority status of the application. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.

(d) A political subdivision receiving notification of the availability of funds for disadvantaged communities which does not submit an application before the three month deadline will be moved, for the purpose of receiving funds available for disadvantage communities, to the bottom of the priority list of the category in which it is listed in priority order. If an applicant which has submitted an application in a timely manner has not received a loan commitment within three months of the date on which the application was received, the application will be returned to the applicant as incomplete and, for the purpose of receiving funds available for disadvantage communities, the project will be moved to the bottom of the priority list in the applicable category.

(e) If after three months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available for disadvantaged communities, the executive administrator will return any incomplete applications and, for the purpose of receiving funds available for disadvantage communities, move all projects for which no applications or incomplete applications were submitted to the bottom of the priority list in the applicable category, where they will be placed in priority order.

(f) Following the re-ranking of the priority list in subsection (e) (referred to hereafter as the second ranking), the executive administrator shall identify the projects which, if eligible, can receive disadvantaged community funds in accordance subsection (b) of this section and which previously have not received written notification of the availability of funds for projects that serve disadvantaged communities.

(g) The executive administrator shall provide in writing to all the political subdivisions associated with projects identified as potentially eligible for disadvantaged community funds based on the second ranking:

(1) notification of the availability of disadvantaged community funds for the project;

(2) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and

(3) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.

(h) In order to receive funding, political subdivisions which have been sent notification of the eligibility of funds from the second ranking must submit applications for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds, within three months of the date of notification of the availability of funds. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.

(i) If, after three months of the second date of notification of availability of funds, there are insufficient applications to obligate the remaining funds made available for disadvantaged communities, the executive administrator will return any incomplete applications. Any funds remaining that exceed the amount needed to fund projects receiving a financial assistance commitment from the board will be made available for disadvantaged communities the next fiscal year.

(j) If, at any time during either six month period of availability of funds, a political subdivision which has been sent notification of the availability of funds submits written notification that it does not intend to submit an application or if additional funds become available for assistance to disadvantaged communities, the executive administrator will identify those additional projects may be eligible for disadvantaged community funds and which previously have not received written notification of the availability of funds for projects that serve disadvantaged communities, following the procedure in subsection (b). Upon identification of such additional projects, the executive administrator shall provide in writing to the political subdivisions associated with the projects:

(1) notification of the availability of disadvantaged community funds for the project;

(2) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and

(3) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.

(k) Potential applicants receiving such notice will be given three months to submit an application. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.

(l) Should an applicant which has submitted an application in a timely manner be unable to receive a loan commitment within three months of the date on which the application was received, the applicant's project will be placed at the bottom of the priority list for the purpose of receiving funds available for disadvantage communities in the applicable category and the application returned to the applicant. Any funds remaining that exceed the amount needed to fund projects receiving a financial assistance commitment from the board will be made available for disadvantaged communities the next fiscal year.

*§375.21. Criteria and Methods for Distribution of Funds for Disadvantaged Communities beginning with fiscal year 2005 intended use plan.*

(a) Starting with the fiscal year 2005 intended use plan and for each fiscal year thereafter, the executive administrator will determine annually the amount of CWSRF program account funds to be made available for projects that will serve disadvantaged communities and will include this information in the intended use plan. Funds available may include funds made available for disadvantaged communities in prior years' intended use plans and disadvantaged communities' funds that have become de-obligated from prior obligations or commitments.

(b) Notwithstanding §375.15(e), for projects identified on the 2005 intended use plan, or any amendment thereof, and subsequent

annual intended use plans, after projects have been ranked according to §375.16, the executive administrator shall:

(1) identify the projects in Category A serving disadvantaged communities in priority order which, if eligible, can receive funds available for disadvantaged communities without exceeding the total amount of funds available for disadvantaged communities for the year;

(2) if the total amount of funds available for disadvantaged communities exceeds the total estimated project costs for all projects in Category A identified as serving disadvantaged communities, identify the projects in Category B in priority order which, if eligible, can receive funds available for disadvantaged communities without exceeding the total amount of funds that are available for disadvantaged communities for the year;

(3) if the total amount of funds available for disadvantaged communities exceeds the total estimated project costs for all projects in Category A and B identified as serving disadvantaged communities, identify the projects in Category C in priority order which, if eligible, can receive funds for disadvantaged communities without exceeding the total amount of funds that are available for disadvantaged communities for the year;

(4) provide in writing to all the political subdivisions associated with projects identified in subsection (1), (2), and (3) herein:

(A) notification of the availability of disadvantaged community funds for the project

(B) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and

(C) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.

(c) In order to receive funding, political subdivisions receiving notification from the executive administrator of the availability of disadvantaged community funds must submit applications for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds, within three months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of the application after the three month period has expired without affecting the priority status of the application. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.

(d) A political subdivision receiving notification of the availability of funds for disadvantaged communities which does not submit an application before the three month deadline will be moved, for the purpose of receiving funds available for disadvantage communities, to the bottom of the priority list of the category in which it is listed in priority order. If an applicant which has submitted an application in a timely manner has not received a loan commitment within three months of the date on which the application was received, the application will be returned to the applicant as incomplete and, for the purpose of receiving funds available for disadvantage communities, the project will be moved to the bottom of the priority list in the applicable category.

(e) If after three months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available for disadvantaged communities, the executive administrator will return any incomplete applications and, for the purpose of receiving funds available for disadvantage, move all projects for which no applications or incomplete applications were submitted to the bottom of the priority list communities in the applicable category, where they will be placed in priority order.

(f) Following the re-ranking of the priority list in subsection (e) (referred to hereafter as the second ranking), the executive administrator shall identify the projects which, if eligible, can receive disadvantaged community funds in accordance subsection (b) of this section and which previously have not received written notification of the availability of funds for projects that serve disadvantaged communities.

(g) The executive administrator shall provide in writing to all the political subdivisions associated with projects identified as potentially eligible for disadvantaged community funds based on the second ranking:

(1) notification of the availability of disadvantaged community funds for the project;

(2) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and

(3) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.

(h) In order to receive funding, political subdivisions which have been sent notification of the eligibility of funds from the second ranking must submit applications for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds, within three months of the date of notification of the availability of funds. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.

(i) If, after three months of the second date of notification of availability of funds, there are insufficient applications to obligate the remaining funds made available for disadvantaged communities, the executive administrator will return any incomplete applications. Any funds remaining that exceed the amount needed to fund projects receiving a financial assistance commitment from the board will be made available for disadvantaged communities the next fiscal year.

(j) If, at any time during either six month period of availability of funds, a political subdivision which has been sent notification of the availability of funds submits written notification that it does not intend to submit an application or if additional funds become available for assistance to disadvantaged communities, the executive administrator will identify which additional projects may be eligible for disadvantaged community funds and which previously have not received written notification of the availability of funds for projects that serve disadvantaged communities, following the procedure in subsection (b). Upon identification of such additional projects, the executive administrator shall provide in writing to the political subdivisions associated with the projects:

(1) notification of the availability of disadvantaged community funds for the project;

(2) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and

(3) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.

(k) Potential applicants receiving such notice will be given three months to submit an application. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.

(l) Should an applicant which has submitted an application in a timely manner be unable to receive a loan commitment within three months of the date on which the application was received, the applicant's project will be placed at the bottom of the priority list in the applicable category and the application returned to the applicant. Any funds remaining that exceed the amount needed to fund projects receiving a financial assistance commitment from the board will be made available for disadvantaged communities the next fiscal year.

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 October 15, 2003.

TRD-200306777
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: December 17, 2003
For further information, please call: (512) 475-2052

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## DIVISION 4. BOARD ACTION ON APPLICATIONS

**31 TAC §375.52**

Statutory authority: Water Code, §§6.101,15.605.

Cross-reference to statute: Water Code, Chapter 15, Subchapters J; and Chapter 17, Subchapters E and F.

*§375.52. Lending Rates.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Average life--the number determined by dividing the sum of the payment periods of all maturities of a loan by the total principal amount delivered to the borrower;

(2) Borrower--each eligible applicant receiving a loan from the board;

(3) Delphis--Delphis Hanover Corporation Range of Yield Curve Scales;

(4) Loan interest rate--the individual interest rate for each maturity of a loan as identified by the executive administrator under this chapter;

(5) Market rate--the individual interest rate for each maturity of a loan payment that is the borrower's market cost of funds based on the Delphis index's scale for the borrower as identified under subsection (c)(1) of this section;

(6) Payment period--the number determined by multiplying the total principal amount due for an individual maturity as set forth in the loan by the standard period for the loan;

(7) Standard period--the number identified by determining the number of days between the date of delivery of the funds to a borrower and the date of the maturity of a bond or loan payment pursuant to which the funds were provided calculated on the basis of a 360-day year composed of twelve 30-day periods and dividing that number by 360.

(b) [~~(a)~~] Procedure for setting fixed interest rates.

(1) The executive administrator will set fixed rates for loans on a date that is:

(A) five business days prior to the adoption of the political subdivision's bond ordinance or resolution or the execution of a loan agreement; and

(B) not more than 45 days before the anticipated closing of the loan from the board.

(2) After 45 days from the assignment of the interest rate on the loan, rates may be extended only with the executive administrator's approval.

(c) Fixed Rates. The fixed interest rates for loans from the CWSRF program account under this chapter will be determined as provided in this subsection. The executive administrator will identify the market rate for the borrower, determine the amount of adjustment from the market interest rate appropriate for the borrower, apply the identified interest rate adjustment to the market rate for the borrower to determine the loan interest rate, and apply the loan interest rate to the proposed principal schedule, as more fully set forth in this subsection.

(1) To identify the market rate:

(A) for borrowers that will not have bond insurance and with a rating by a recognized bond rating entity, the executive administrator will rely on the higher of the Delphis scale for the current bond rating of the borrower or the Delphis 90 index;

(B) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the borrower's market cost of funds as related to the Delphis 90 index; or

(C) for borrowers with bond insurance and that are rated by a recognized rating entity or for borrowers with bond insurance and no rating by a recognized bond rating entity, the executive administrator will rely on the higher of the borrower's uninsured fixed rate index scale or the Delphis 96 index scale.

(2) The program is designed to provide borrowers with a 70 basis point reduction from the market rate based on a level debt service schedule. For borrowers to which §375.18(c) of this title (relating to Administrative Cost Recovery) must be applied or for borrowers which choose to have §375.18(c) of this title applied, the program is designed to provide borrowers with a 95 basis point reduction from the market rate based on a level debt service schedule. Notwithstanding the foregoing, in no event shall the loan interest rate as determined under this section be less than zero.

(3) To determine the loan interest rate, the following procedures will apply:

(A) Unless otherwise requested by the borrower under subparagraph (B) of this paragraph, the loan interest rate will be determined based on a debt service schedule that provides interest only will

be paid in the first year of the debt service schedule and in which the annual debt service payments are level, as determined by the executive administrator. The executive administrator will identify the appropriate Delphis scale for the borrower and identify the market rate for the maturity due in the year preceding the year in which the average life is reached. The executive administrator will reduce that market rate by the number of basis points applicable according to paragraph (2) of this subsection and thereby identify a proposed loan interest rate. The proposed loan interest rate will be applied to the proposed principal repayment schedule. If the resulting debt service schedule is level to the satisfaction of the executive administrator, then the proposed loan interest rate will be the loan interest rate for the loan. If the resulting debt service schedule is not level to the satisfaction of the executive administrator, then the executive administrator may adjust the interest rate for any or all of the maturities to identify the loan interest rate that as closely as possible achieves the interest savings applicable according to paragraph (2) of this subsection while maintaining the principal schedule proposed by the borrower

(B) A borrower may request a debt service schedule in which the annual debt service payments are not level through the term of the loan, as determined by the executive administrator. In this event, the executive administrator will approximate a level debt service schedule for the loan amount and identify a proposed loan interest rate that provides for annual debt service payments that are level for the term of the loan following the procedures set forth in paragraph (1)(A) of this subsection. From the level debt service schedule, the executive administrator will determine the amount of the subsidy that would have been provided if the annual debt service payments had been level. The executive administrator will then identify the loan interest rate that as closely as possible provides the borrower the identified subsidy amount for the principal schedule requested by the borrower.

[(b) Fixed rates. The fixed interest rates for loans under this subchapter are set at rates 70 basis points below the fixed rate index rates for borrowers plus an additional reduction under paragraph (1) of this subsection, or if applicable, are set at the total basis points below the fixed rate index for borrowers derived under paragraph (2) of this subsection. Using individual coupon rates for each maturity of proposed debt based on the appropriate index's scale, the fixed rate index rates shall be established for each uninsured borrower based on the borrower's market cost of funds as they relate to the Delphis Hanover Corporation Range of Yield Curve Scales (Delphis) or the 90 index scale of the Delphis. For borrowers with either no rating or a rating less than investment grade, the 90 index scale of the Delphis will apply. The fixed rate index rates shall be established for each insured borrower based on the higher of the borrower's uninsured fixed rate index scale or the Delphis 96 index scale.]

[(1) Under §375.18 of this title (relating to Administrative Cost Recovery) an additional 25 basis points reduction will be used, for total fixed interest rates of 95 basis points below the fixed index rates for such borrowers.]

[(2) For borrowers filing applications on or after February 5, 1998 for loans with an average bond life in excess of 14 years or, at the discretion of the board for borrowers filing applications on or after February 5, 1998 for loans which have debt schedules less than 20 years and which produce a total fixed lending rate reduction in excess of a standard loan structure (defined as a debt service schedule in which the first year of the maturity schedule is interest only followed by 20 years of principal maturing on the basis of level debt service), the following procedures will be used in lieu of the provisions of paragraph (1) of this subsection to determine the fixed lending rate reduction.]

[(A) The interest rate component of level debt service will be determined by using the 13th year coupon rate of the appropriate index of the Delphis scales that corresponds to the 13th year of principal of the standard loan structure and that is measured from the first business day on the month the loan application will be presented to the board for approval.]

[(B) Level debt service will be calculated using the 13th year Delphis Scale coupon rate as described in subparagraph (A) of this paragraph and the par amount of the loan according to a standard loan structure. For a loan which has been proposed for a term of years equal to a standard loan structure, the dates specified in the loan application shall be used for interest and principal calculation. For a loan which has been proposed for a term of years less than a standard loan structure or longer than a standard loan structure, level debt service will be calculated beginning with the dated date and based upon the principal and interest dates specified in the application, and continuing for the term of a standard loan structure.]

[(C) A calculation will be made to determine how much a borrower's interest would be reduced if the loan had been made according to the total fixed lending rate reduction provided in paragraph (1) of this subsection and based upon the principal payments calculated in subparagraph (B) of this paragraph.]

[(D) The board will establish a total fixed lending rate reduction for the loan that will achieve the interest savings in subparagraph (C) of this paragraph based upon the principal schedule proposed by the borrower.]

(d) [(c)]Variable rates. The interest rate for variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the board on its outstanding variable rate debt plus the cost of maintaining the variable rate debt in the CWSRF. Variable rate loans are required to be converted to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the executive administrator. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the executive administrator and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsections [(a) and] (b) and (c) of this section.

(e) [(d)] Adjustment of interest rate. The executive administrator may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

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 October 15, 2003.

TRD-200306778
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: December 17, 2003
For further information, please call: (512) 475-2052

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# TITLE 34. PUBLIC FINANCE

## PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

## CHAPTER 105. CREDITABLE SERVICE

**34 TAC §105.5**

The Texas County and District Retirement System proposes new §105.5 concerning the time, procedure, and manner for adjusting a member's record because of a reporting error by a participating subdivision. The rule implements the authority granted to the retirement system pursuant to §7 of HB 1984 as passed in the regular session of the 78th Legislature, to correct any administrative or operational error by appropriate means. Under the proposed rule, if as a result of a reporting error by a subdivision, a mistake is made with respect to the credited service, deposits, or service credit of a person, the subdivision or the person may file an application with the retirement system requesting an adjustment to the person's membership record. The rule sets forth the time and manner in which adjustments can be made to offset the effects of a reporting error to the extent practicable without creating extraordinary financial burdens for the member or the subdivision. In treating adjustments to credited service (vesting) separately from adjustments to service credit (benefits), the rule provides for the recognition of all properly creditable service for retirement eligibility purposes while permitting limited or partial adjustments to benefit credits based on the corrective contributions voluntarily deposited by the member and the financial capability of the subdivision.

Tom Harrison, Director of Legal and Governmental Relations for the Texas County and District Retirement System, 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 administering the rule. There will be no fiscal implication for a local government as a result of administering the rule aside from the expected costs of funding those benefits not taken into account because of a reporting error by the participating local governmental entity.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the accumulation of retirement benefits for employees of participating entities in the manner and to the extent intended by the local governmental entity. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted to Tom Harrison, Director of Legal and Governmental Relations, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §842.112 is affected by this proposed rule.

*§105.5. Reporting Errors: Adjustments Prior to Retirement.*

(a) If, as a result of a reporting error, a mistake is made with respect to the credited service, deposits, or service credit properly creditable to a person, an application for an adjustment to the person's record may be filed by a subdivision or by the person seeking the adjustment.

(b) If evidence satisfactory to the director has been provided, the director may accept the application and order an adjustment to the person's record in accordance with this section on such terms and conditions as are appropriate under the circumstances provided the mistake occurred without the knowledge or fault of the person seeking the adjustment.

(c) In this section the term "credited service" means months of service recognized for purposes of retirement eligibility.

(d) In this section the term "service credit" means the monetary credits granted to a member who performs service for a participating subdivision.

(e) In this section the term "filed" means received by the system.

(f) In this section the term "accepted" means approved by the system for purposes of adjusting a person's record.

(g) All applications filed with the retirement system must be certified by the subdivision before the application may be accepted.

(h) The application of a subdivision may be filed at any time.

(i) The application of a person seeking adjustment must be filed with the retirement system within one year from the earlier of the actual date of discovery of the error or the date by which a reasonable, diligent person in like circumstances would have become aware that an error had occurred. After the expiration of that year, an application may be filed only by the subdivision.

(j) If the period of service subject to this section is greater than 12 months or ended more than 12 months prior to the application filing date, the application must be approved by the governing board of the subdivision before it may be accepted by the retirement system.

(k) On acceptance of an application, a membership record for that person shall be created or modified, as appropriate, to reflect the amount of all service that would have been creditable to that member if the service had been properly reported to the system.

(l) The adjustment to the person's credited service record shall be effective upon acceptance of the application. The rights of the member with respect to an adjustment to credited service shall be determined under the plan provisions and statutes in effect on the date the application is filed.

(m) If an application seeks an adjustment to service credit or to the person's individual account whether or not coincidental to an adjustment to credited service, evidence reflecting the compensation that was paid to the member by the subdivision for the applicable periods of service must be submitted to the system.

(n) Based upon the written records supporting the application, the retirement system shall calculate the cumulative compensation paid to the member for such periods of service.

(o) The retirement system shall determine the maximum allowable adjustment to the person's individual account by applying the current employee contribution rate in effect on the application filing date to the cumulative compensation not previously recognized for employee contribution purposes.

(p) The retirement system shall send notice to the person and to the subdivision describing the maximum allowable adjustment that can be made to the person's individual account, the period during which either party may file an objection to the determination, and the period during which a voluntary contribution may be deposited. If no objection is timely filed with the retirement system, the maximum allowable adjustment amount becomes fixed and final for all purposes with respect to the period of service that is the subject of the application.

(q) A single voluntary contribution in an amount that does not exceed the maximum allowable adjustment to the person's individual

account may be deposited with the retirement system at any time during the six calendar months following the date the maximum allowable adjustment amount becomes fixed and final in accordance with paragraph (p).

(r) A voluntary contribution deposited under this section shall be credited to the person's individual account as of the date the contribution is received by the system.

(s) For purposes of determining the current service credits and multiple matching credits with respect to a voluntary contribution deposited under this section, the contribution shall be deemed to be accumulated contributions made by the member to the retirement system during the calendar year of deposit.

(t) The benefits attributable to a voluntary contribution and any prior service credit adjustment shall be considered as part of, and funded in the same manner as, any other pension liabilities of the subdivision.

(u) The member may receive and retain credited service recognized in accordance with this section without regard to the depositing of a voluntary contribution or the granting of service credit.

(v) If, after considering the acts or omissions of the parties relating to the mistake and its discovery, the financial circumstances of the subdivision, and the total cost of a full adjustment of service credit, the director determines that a full adjustment is not warranted, feasible or prudent, the director may limit the maximum allowable adjustments to a member's record under this section. This may include limiting the amount or timing of current or prior service credit granted to a person under this section.

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 October 20, 2003.

TRD-200306904
Tom Harrison
Director, Legal and Governmental Relations
Texas County and District Retirement System
Proposed date of adoption: December 4, 2003
For further information, please call: (512) 328-8889

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

### CHAPTER 211. ADMINISTRATION

**37 TAC §211.1**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code section 211.1 by amending the definitions of: basic licensing course, endorsement of eligibility, firearms, line of duty, and Texas peace officer for clarification. The following definitions were added for clarification: academic program, alternative delivery, field training program, governing body resolution, high school diploma, law enforcement automobile for training, moral character, patrol rifle, proprietary training contractor, public security officer, rifle, training program, and training provider. Subsection (b) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by clarifying the definitions and the rules promulgated by the Commission.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by removing unnecessary

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

No other statutes are affected by this proposed rule amendment.

*§211.1. Definitions.*

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic provider - A school, accredited [~~recognized~~] by the Southern Association of Colleges and Schools and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(2) Academic program - A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools and the Higher Texas Education Board, authorized by the Commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of Commission-approved curricula.

(3) [~~(2)~~] Accredited college or university - An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, or the Western Association of Schools and Colleges.

(4) [~~(3)~~] Active - A license issued by the commission that meets the current requirements of licensure, including those legislatively required.

(5) [~~(4)~~] Agency - A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(6) [~~(5)~~] ALJ or Administrativelaw [~~Law~~] judge[~~Judge~~] - See "Hearings Examiner" defined below.

(7) Alternative delivery - A learning event characterized by a separation of place or time between the instructor and student, the students, and/or the student and learning resources; and in which the interaction between these is conducted through one or more media.

(8) [~~(6)~~] Appointed - Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Occupations Code, Chapter 1701, without regard to pay or employment status.

~~[(7) Armed public security officer - A person appointed under the provisions of Chapter 758, 70th Legislature, 1987.]~~

(9) [~~(8)~~] Background investigation - may include:

(A) an investigation looking specifically at a person's dependability; integrity; initiative; situational reasoning ability; self-control; writing skills; reading skills; oral communications skills; interpersonal skills; and physical ability; and

(B) a report that documents an investigation into an applicant's suitability for licensing and appointment which includes: biographical data; scholastic data; employment data; criminal history data; interviews with references, supervisors, and other people who have knowledge of the person's abilities, skills, and character; and a summary of the investigator's findings and conclusions regarding the applicant's moral character and suitability.

(10) [~~(9)~~] Basic licensing course - Any current commission developed course that is required before an individual may be licensed by the commission. The courses include: Peace Officer, [~~Reserve Officer~~], Criminal Justice Transfer Curriculum, [~~and~~] County Corrections, and Basic Instructor.

(11) [~~(10)~~] Basic peace officer course - The current commission developed course(s) required for licensing as a peace officer, taught at a licensed law enforcement academy in accordance with commission requirements.

(12) [~~(11)~~] Certified copy - A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(13) [~~(12)~~] Chief administrator - The head or designee of an agency.

(14) [~~(13)~~] Commission - The Texas Commission on Law Enforcement Officer Standards and Education.

(15) [~~(14)~~] Commissioned - Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(16) [~~(15)~~] Commissioners - The nine commission members appointed by the governor and, where appropriate, the five ex-officio members.

~~[(16) Committee - The Texas Peace Officers' Memorial Advisory Committee, an advisory body authorized under Government Code, Chapter 3105 Occupations Code, Chapter 1701, or its successor.]~~

(17) Contract jail - A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.092.

(18) Contractual training provider - A law enforcement agency, a law enforcement association, or alternative delivery trainer that conducts specific education and training under a contract with the commission.

(19) Convicted - Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense;

(C) the cause has been made the subject of an expunction order; or

(D) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(20) Court-ordered community supervision - Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(21) Distance education - The enrollment and study with an educational institution, which provides lesson materials prepared in a sequential and logical order for study by students on their own.

(22) Duty ammunition - Ammunition required or permitted by the agency to be carried on duty.

(23) Endorsement [~~of eligibility~~] - An official document stating that an individual has met the minimum training standards appropriate to the type of examination sought.

(24) Executive director - The executive director of the commission or any individual authorized to act on behalf of the executive director.

(25) Experience - Includes each month, or part thereof, served as a peace officer, reserve, jailer, or telecommunicator. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(26) Firearms - Any handgun, shotgun, rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity on or off duty.

(27) Firearms proficiency - Successful completion of the annual firearms proficiency requirements.

(28) Field training program - A program intended to facilitate a peace officer's transition from the academic setting to the performance of the general law enforcement duties of the appointing agency.

(29) Governing body resolution - A formal expression or action by a governing body authorizing a particular act, transaction, appointment, intention, or decision.

(30) [~~(28)~~] Hearings examiner or Judge - An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings pursuant to the Texas Government Code, Ch. 2003, or a person appointed by the executive director to conduct administrative hearings for the commission.

(31) High school diploma - High school diploma is a document issued by a school district or a school accredited by the Texas Private School Accreditation Commission verifying that the recipient has successfully completed the course of study prescribed by the school district and the Texas Education Agency, or a comparable regulatory body in another state.

(32) [~~(29)~~] Individual - A human being who has been born and is or was alive.

(33) [~~(30)~~] Jailer - A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Government Code §511.092.

(34) [~~(31)~~] Killed in the line of duty - A Texas peace officer killed as a directly attributed result of a personal injury sustained in the line of duty.

(35) [~~(32)~~] Law - Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(36) [~~(33)~~] Law enforcement academy - A school operated by a governmental entity that has been licensed by the commission, which may provide basic licensing courses and continuing education.

(37) Law enforcement automobile for training - A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Transportation Code Secs. 546.003 and 547.702.

(38) [~~(34)~~] Lesson plan - Detailed guides from which an instructor teaches. The plan includes the goals, specific content and subject matter, performance or learning objectives, references, resources, and method of evaluating or testing students.

(39) [~~(35)~~] License - A license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(40) [~~(36)~~] Licensee - An individual holding a license issued by the commission.

(41) [~~(37)~~] Line of duty - Any lawful and reasonable action, which a Texas peace officer is [~~authorized by law, rule, regulation, or written condition of employment or appointment to perform.~~] required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(42) Moral character - The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(43) [~~(38)~~] Officer - A peace officer or reserve.

(44) Patrol rifle - Any semi-automatic, magazine-fed rifle with iron/open sights or with a frame mounted optical enhancing sighting device, that is carried by the individual officer in an official capacity on or off duty.

(45) [~~(39)~~] Peace officer - A person elected, employed, or appointed as a peace officer under the Code of Criminal Procedure, Article 2.12, or under other statute.

(46) [~~(40)~~] Placed on probation - Has received an adjudicated, unadjudicated or deferred adjudication probation for a criminal offense.

(47) [~~(41)~~] POST - State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(48) Proprietary training contractor - A approved training contractor operated for a profit.

(49) Public security officer - A person employed or appointed as an armed security officer by this state or a political subdivision of this state. The term does not include a security officer employed by a private security company that contracts with this state or a political subdivision of this state to provide security services for the entity.

(50) [~~(42)~~] Reactivate - To make a license issued by the commission active after at least a two-year break in service.

(51) [~~(43)~~] Reinstate - To make a license issued by the commission active after disciplinary action or after expiration of a license due to failure to obtain required continuing education.

(52) [~~(44)~~] Renew - Continuation of an active license issued by the commission.

(53) [~~(45)~~] Reserve - A person appointed as a reserve law enforcement officer under the provisions of the Local Government Code, §85.004, §86.012 or §341.012.

(54) Rifle - Any bolt action or semi-automatic rifle with magnified sights that is carried by the individual officer in an official capacity on or off duty.

(55) [~~(46)~~] Self-assessment - Completion of the commission created process, which gathers information about a training or education program.

(56) [~~(47)~~] SOAH - The State Office of Administrative Hearings.

(57) [~~(48)~~] Successful completion - A result of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(58) [~~(49)~~] Telecommunicator - A dispatcher or other emergency communications specialist appointed under or governed by the provisions of the Occupations Code, Chapter 1701.

(59) [~~(50)~~] Texas peace officer - For the purposes of eligibility for the Texas Peace Officers' Memorial, an individual who had been elected, employed, or appointed as a peace officer under Texas law; an individual appointed under Texas law as a reserve peace officer who; a commissioned deputy game warden, or a corrections officer in a municipal, county or state penal institution, a federal law enforcement officer or special agent performing duties in this state, including those officers under Article 2.122, Code of Criminal Procedure, or any other officer authorized by Texas law.

(60) [~~(51)~~] Training coordinator - An individual, appointed by a commission-recognized training provider, who has the knowledge and skills to oversee the training activity conducted by that provider.

(61) [~~(52)~~] Training cycle - One period from the set of contiguous 48-month periods that begins on September 1, 2001. Each training cycle is composed of two contiguous 24-month units.

(62) [~~(53)~~] Training hours - Actual classroom or distance education hours. One college semester hour equates to 20 training hours.

(63) Training program - An organized collection of various resources recognized by the commission for providing preparatory

or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(64) Training provider - A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by the commission to provide preparatory or continuing training for licensees or potential licensees.

(65) [~~(54)~~] Verification (verified) - The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is March 1, 2004. [~~2002.~~]

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 October 15, 2003.

TRD-200306790
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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**37 TAC §211.3**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code section 211.3 by adding subsection (c)(2) of this section encouraging individuals to use the commission's website. Subsection (d) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by encouraging individuals to obtain materials through the commission's website thereby providing faster access and less time required by staff to provide information.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by removing unnecessary

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.201 Public Interest Information.

*§211.3. Public Information.*

(a) All commission rules are published in the Texas Register as they are proposed and adopted.

(b) The commission will index, maintain, and make available for public inspection at the Austin headquarters a copy of:

(1) the current rules;

(2) all interpretive memoranda, policies, and procedures; and

(3) all final orders, decisions, and opinions of the commission.

(c) Members of the public may obtain:

(1) copies of the rules and other documents published by the commission at the cost recovery rate established in the fee schedule for printed documents. The current cost schedules are available upon request from the commission;

(2) the rules and many other documents published by the commission are also available free of charge on the commission website: www.tcleose.state.tx.us ; and

(3) [~~(2)~~] unpublished materials available under the Public Information Act at the rate established by the General Services Commission for such materials.

(d) The effective date of this section is March 1, 2004. [~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306791
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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## CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

**37 TAC §215.1**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending section 215.1. The

addition of a new training provider type required clarification in subsections (a) and (b) of this section. Subsection (d) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be substantial fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by clarifying the rules promulgated by the Commission. The proposed rules will clarify the types of training providers that may be licensed by the Commission.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.251 Training Programs; Instructors.

*§215.1. Licensing of Training Providers.*

(a) The commission may issue credentials to three types of training or education providers:

(1) licensed law enforcement academy;

(2) contractual training provider; or

(3) a licensed [~~an~~] academic provider.

(b) The commission issues these licenses or contracts for a specified period of time:

(1) five years for a licensed law enforcement academy;

(2) two years for a contractual training provider;

(3) five years for a licensed [~~an~~] academic provider; or

(4) for a shorter period as appropriate for a program found to be at risk.

(c) License renewal is dependent upon continued compliance with commission rules and performance, which includes risk assessment.

(d) The effective date of this section is March 1, 2004 [~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306793

Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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**37 TAC §215.3**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code section 215.3 by amending subsection (b) of this section to clarify the requirements of a training needs assessment. Subsection (c) of this section is amended to clarify firing range requirements. Subsection (h) of this section is added (moved from 215.15) to identify the awarding of training credit from academies. Subsection (k) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be substantial fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.251 Training Programs; Instructors.

*§215.3. Academy Licensing.*

(a) The commission may issue an academy license to an academy that is operated by or for the state or any political subdivision of the state for the specific purpose of providing law enforcement, corrections, telecommunications, and/or other law enforcement related training. In order for a license to be issued, a comprehensive training needs assessment must be submitted to the commission, justifying the need for an additional academy in the regional planning commission or council of governments area in which the proposed academy will be located. The needs assessment must include as a minimum:

(1) a description of whom the academy will serve, including the identity of each law enforcement agency the academy expects to serve, the number of officers the academy expects to train annually from each agency, and the basis for the academy's expectations;

[~~(2) a schedule of tuition and fees, if any, that will be charged;~~]

(2) [~~(3)~~] a description of existing law enforcement training programs in the proposed service area and documentation justifying the need for an additional academy;

(3) [~~(4)~~] the number and types of courses that will be offered;

(4) [~~(5)~~] what specific training need(s) are not currently being provided by licensed academies in the regional planning commission or council of governments area; and

(5) [~~(6)~~] proof of notification by certified mail to all licensed academies within the regional planning commission or council of governments area of their intent to apply for an academy license and what specific training needs the applicant intends to meet.

(b) If the commission determines that the training needs assessment justifies an additional academy in the area, and before an academy license may be issued, the proposed academy must pass an inspection of its facilities and instructional materials and must submit for commission approval:

(1) a completed, written application on a commission form that is signed by the chief administrator or head of the organization exercising administrative control over the academy;

(2) a resolution of support from the governing body of the sponsoring organization;

(3) the proposed formal name of the academy, which must not misrepresent the status of the academy or be confusing to law enforcement or to the public;

(4) a proposed startup and operational budget and a proposed course schedule to show that training will be conducted on a continuing basis;

(5) a schedule of tuition and fees, if any, that will be charged;

(6) [~~(5)~~] documentation that an advisory board has already been appointed as provided by the Occupations Code, Chapter 1701.252, including a resume for each board member;

(7) [~~(6)~~] any advisory board minutes necessary to show the decisions which have been made by that board in all areas required by the commission;

(8) [~~(7)~~] the name, social security number and resume of the proposed training coordinator and any academy staff instructors, and a list of instructors who are scheduled to teach the submitted proposed course schedule;

(9) [~~(8)~~] documentation that the academy will be based on at least one of the following sponsoring organizations:

(A) a law enforcement agency that has at least 50 full-time paid peace officers and/or county jailers under current appointment;

(B) an institution recognized by the Texas Higher Education Coordinating Board; or

(C) a regional planning commission or council of governments (COG) board;

*(i)* the commission will issue only one regional academy license within each regional planning commission or council of governments area at any one time;

*(ii)* to be or remain a regional academy, that particular academy must substantially meet the training needs of all current or prospective licensees who reside in that region;

(10) [~~(9)~~] certification that the academy meets the requirements of the Americans with Disabilities Act (ADA), to which its entity is subject, and as those requirements apply to the academy's function (including course materials, course presentation, and facilities). The certification will represent that the academy will maintain this compliance during the term of the license;

(11) [~~(10)~~] the physical location and a description of the proposed training facility and any satellite sites; and

(12) [~~(11)~~] an academy may contract as cosponsor with law enforcement agencies and other entities to conduct continuing education classes or basic jail training. The academy is responsible for certifying the quality of the training, compliance with commission rules and guidelines, and maintaining the necessary documentation.

(c) The pre-licensing inspection of the academy's facilities and instructional materials shall be conducted by commission staff, or by a team of academy coordinators as appointed by the executive director. An academy must have and maintain:

(1) a dedicated classroom that is sufficiently air-conditioned and heated, well lit, free of noise and other unreasonable distractions, and of sufficient size for the number of students to be served;

(2) instructors and adequate instructional resources to conduct effective training;

(3) adequate and convenient restrooms, breakroom, and parking area;

(4) adequate and convenient law enforcement reference library for student and staff use;

(5) a proprietary interest in, or a written contract providing for [~~an all-weather accessible~~] a firing range suitable for the course of fire required in the current basic peace officer course with safety rules clearly posted, adequate restrooms, secure storage and first aid equipment while on the premises;

(6) a proprietary interest in, or a written contract providing for at least one driving range designated for criminal justice training. Each academy must have at least one automobile available for criminal justice driving training; and

(7) sufficient access to current and appropriate teaching tools and electronic equipment, including video players and projection equipment, computer hardware, software, and Internet access.

(d) The chief administrator or head of the organization exercising administrative control of the proposed academy and the proposed training coordinator must appear before the commissioners to respond to any questions prior to any action being taken on the application.

(e) Once an academy license is issued, the chief administrator of the academy or the sponsoring agency must report in writing to the commission within 30 days:

(1) any change in training coordinator;

(2) any substantial failure to meet commission rules and standards;

(3) any rule violation by it or by its training coordinator, instructors, or advisory board;

(4) when non-compliance with ADA or any other federal or State requirements is discovered; or

(5) any change in academy name, physical location, mailing address, electronic mail address, or telephone number.

(f) The commission may cancel an academy license if it was issued in error or based on false or incorrect information.

(g) The commission may suspend an academy license, or the executive director or his designee may issue a written reprimand to the sponsoring agency, if:

(1) the academy or the sponsoring agency fails to comply with a commission rules or any law; or

(2) the academy has been classified as at risk under §215.13 of this title. If the academy is classified as at risk, the chief administrator of the academy or the sponsoring agency must report to the commission in writing within 30 days what steps have been taken to correct deficiencies and on what date they expect to be in compliance.

(h) The commission will award training credit for any course conducted by a licensed academy as provided by commission rules unless:

(1) the course is not conducted as required by commission rules and the advisory board;

(2) the training is not related to a commission license;

(3) the advisory board, the academy, the training coordinator, the course coordinator, or the instructor substantially failed to discharge any responsibility required by commission rule; or

(4) the credit was claimed by deceitful means.

(i) [~~(h)~~] The commission may revoke an academy license if:

(1) the academy has been classified as at risk for a 12-month period without substantial improvement;

(2) its training coordinator intentionally or knowingly submits a falsified document or a false written statement or representation to the commission; or

(3) it has not met the needs of the communities it is required to serve.

(j) [~~(i)~~] An academy may voluntarily surrender its license at any time for any reason. To voluntarily surrender its license, an academy's chief administrator must send written notice, accompanied by the license, to the executive director. The license is surrendered effective immediately upon receipt by the executive director.

(k) [~~(j)~~] The effective date of this section is March 1, 2004. [~~2002.~~]

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 October 15, 2003.

TRD-200306794

Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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**37 TAC §215.5**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, section 215.5 by amending subsections (e), (g), (f), and (i) of this section. Subsection (g) of this section is amended to clarify methods where training credit will not be awarded. Subsection (e) of this section is amended to clarify the requirements of an applicant for a training provider contract. Subsection (f) of this section is amended to clarify the requirements of a contractual training provider. Subsection (i) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be substantial fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that awarding of credit will be the same for all training providers.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.251 Training Programs; Instructors.

*§215.5. Contractual Training.*

(a) The commission may, at the discretion of the executive director, enter into a contract with a law enforcement agency, a law enforcement association, or alternative delivery trainer to conduct training for licensees.

(b) Any such contract is limited to those terms expressly included in the contract or incorporated by reference and must be dated and:

(1) on the currently prescribed commission format;

(2) signed by the executive director;

(3) signed by the chief administrator or head of the sponsoring organization; and

(4) signed by the training coordinator responsible for the administration of that training.

(c) A contract may approve a specific course(s) and the number of times it will be offered. These contracts are for a stated period of time, or two years, whichever is less, but may be terminated within 10 days by written notice on the part of either party to the contract. A contract may incorporate by reference a law, rule, or any other document, however, any waiver, exception, or deletion must be expressed.

(d) The executive director may terminate a contract if no training is conducted within each calendar year unless the chief administrator has petitioned the executive director for a waiver, and the waiver has been granted. The executive director may suspend a contract, until compliance, for any violation of its terms or of any commission rule or law. Any party may terminate, upon written notice to all other parties, received by either the executive director, the coordinator, or any other named person or office.

(e) The applicant for a [~~contractual~~] training provider contract must:

(1) provide a comprehensive needs assessment to the executive director justifying the need for a contract. The needs assessment must include at a minimum:

(A) the names of the licensed academies located in the council of governments or regional planning commission area of the applicant;

(B) a description of the existing law enforcement training programs in the area;

(C) what specific training need(s) are to be addressed by the proposed contract; and

(D) the number and types of courses that will be offered during the first quarter of the executed contract.[;]

(E) If the commission determines that the needs assessment justifies a contract, the chief administrator of the contractual training provider must:

[~~(2) appoint and maintain an advisory board as required by law and rule;~~]

(2) [~~(3)~~] follow the current requirements set by its advisory board;

(3) [~~(4)~~] select a training facility that meets all [~~academy~~] inspection requirements identified in Rule 215.3[~~, if applicable;~~]

(4) [~~(5)~~] select any instructional material, equipment, or resources necessary for the course(s);

(5) [~~(6)~~] forward for approval, upon the executive director's request, at least one copy of the learning objectives of each course covered by the contract;

(6) [~~(7)~~] appoint and maintain the appointment of a qualified training coordinator;

(7) [~~(8)~~] ensure the training coordinator discharges any responsibilities required by law, rule, or contract, including Rule [~~§~~]215.9 and [~~of this title;~~]

[~~(9) select and monitor the performance of qualified instructors;~~]

[~~(10) admit any licensee subject to any reasonable limitations or preferences required by the advisory board;~~]

[~~(11) ensure effective training and distribute learning objectives to each student before the course is taught;~~]

[~~(12) teach or ensure that each course is taught in accordance with the instructor guide and/or learning objectives provided or approved by the commission;~~]

[~~(13) keep records of all contractual training for at least five years after training has ended; and~~]

[~~(14) proctor any required examination and ensure fair, honest results.~~]

(8) report in writing to the commission within 30 days:

(A) any change in chief administrator;

(B) any change in training coordinator;

(C) any substantial failure to meet commission rules and standards;

(D) any rule violation by it or by its training coordinator, instructors, or advisory board;

(E) when non-compliance with ADA or any other federal or state requirements is discovered; or

(F) any change in provider name, physical location, mailing address, electronic mail address, or telephone number.

[~~(f) Unless expressly waived by the contract:~~]

[~~(1) an advisory board for a contractual training provider must discharge the responsibilities of such boards as required by law or rule; and~~]

[~~(2) a training coordinator for a contractual training provider must discharge the responsibilities of § 215.9 of this title.~~]

(g) By entering into any such contract the commission approves specific training which will be fully credited by the commission to each student licensee as continuing education training or to the agency as continuing education training provided by that agency, unless:

(1) the training was not conducted in compliance with the contract; [~~contractual;~~] or

(2) the advisory board, training coordinator or instructor substantially failed to discharge any responsibility required by commission rule [~~.~~]; or

(3) the credit was claimed by deceitful means.

(h) Once the contract has been executed, the contractual trainer may be evaluated periodically by the commission as determined by the executive director. The evaluation may be accomplished by commission staff or by training professionals selected and trained by the executive director.

(i) The effective date of this section is March 1, 2004. [~~2002.~~]

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 October 15, 2003.

TRD-200306795
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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**37 TAC §215.6**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes a new rule to Title 37, Texas Administrative Code by adding section 215.6. The new rule establishes application standards and operating standards

for academic alternative providers. Changes include requiring each program to have a training coordinator and advisory board and to comply with the rule 215.9 for training coordinators and rule 215.7 advisory boards.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by clarifying the rules promulgated by the Commission. The proposed rules will clarify expectations for the programs to ensure higher quality and consistency. The rules will help programs be more successful reducing the number of programs that might be found at risk.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for a new rule under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with the Texas Occupations Code §1701.251 Training Programs; Instructors and §1701.252 Program and School Requirements; Advisory Boards.

*§215.6. Academic Alternative Licensing.*

(a) The commission may, at the discretion of the executive director, issue an academic alternative license to a Texas college that is accredited by the Southern Association of Colleges and Schools (SAC) and which has a criminal justice or law enforcement program approved by the Higher Education Coordinating Board (HECB). In order for a license to be issued, a training needs assessment must be submitted to the commission. The needs assessment must include at a minimum:

(1) a description of existing law enforcement training programs in the proposed service area;

(2) proof of notification by certified mail to all licensed academies within the area of the applicant's intent to apply for an academic provider license; and

(3) a description of how the applicant will enhance the current training situation in the area by identifying:

(A) the number of individuals the applicant expects to train annually; and

(B) the basis for the applicant's expectations.

(b) If the commission determines that the needs assessment justifies a license, and before an academic alternative license may be issued, the applicant must pass an inspection of its facilities and instructional materials as required by Rule 215.3.

(c) As a condition of licensure, the dean of the department:

(1) must appoint and maintain an advisory board as required by law and Rule 215.7;

(2) must follow the current requirements set by its advisory board;

(3) must select a facility that meets all inspection requirements as required by Rule 215.3;

(4) must select any instructional material, equipment, or resources necessary for the academic alternative courses;

(5) must forward for approval, upon the executive director's request, at least one copy of the lesson plans of each academic alternative course provided;

(6) must appoint and maintain the appointment of a qualified training coordinator;

(7) must ensure that the training coordinator discharges any responsibilities required by law, rule, or contract, including Rule 215.9 of this title;

(8) must make provisions for the Registrar to issue all endorsements;

(9) may make contractual provisions with a licensed academy to provide the sequence courses; and

(10) must report in writing to the commission within 30 days:

(A) any change in dean of the department;

(B) any change in training coordinator;

(C) any substantial failure to meet commission rules and standards;

(D) any rule violation by it or its training coordinator, instructors, or advisory board;

(E) any change in status with HECB;

(D) any change in status with SAC;

(F) when non-compliance with ADA or any federal or state requirements is discovered; or

(G) any change in provider name, physical location, mailing address, electronic mail address, or telephone number.

(d) The commission may cancel an academic alternative license if it was issued in error or based on false or incorrect information.

(e) The commission will award academic coursework credit to each student for the academic alternative courses when provided by licensed academic alternative providers unless:

(1) the courses were not conducted in compliance with commission rules;

(2) the courses were not conducted in compliance with the Higher Education Coordinating Board;

(3) the advisory board, training coordinator, or instructor substantially failed to discharge any responsibility required by rule; or

(4) the credit was obtained by deceitful means.

(f) The commission may suspend an academic alternative license, or the executive director or his designee may issue a written reprimand to the dean of the department, if:

(1) the academic alternative provider fails to comply with a commission rules or any law; or

(2) the academic alternative provider has been classified as at risk under Rule 215.13 of this title. If the academic alternative provider is classified as at risk, the dean of the department must report to the commission in writing within 30 days what steps have been taken to correct deficiencies and on what date they expect to be in compliance.

(g) The commission may revoke an academic alternative license if:

(1) the academic alternative provider has been classified as at risk for a 12-month period without substantial improvement; or

(2) the academic alternative provider has lost either SAC accreditation or HECB approval; or

(3) its training coordinator intentionally or knowingly submits a falsified document or a false written statement or representation to the commission;

(h) An academic alternative provider may voluntarily surrender its license at any time for any reason. To voluntarily surrender its license, the dean of the department must send written notice, accompanied by the license, to the executive director. The license is surrendered effective immediately upon receipt by the executive director.

(i) The effective date of this section is March 1, 2004.

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 October 15, 2003.

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Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

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For further information, please call: (512) 936-7717

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**37 TAC §215.7**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending section 215.7. The addition of a new training provider type required clarification in section (a) of this section. Subsection (l) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be substantial fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by clarifying the rules promulgated by the Commission. The proposed rules will clarify expectations for the programs to ensure higher quality and consistency. The rules will help programs be more successful reducing the number of programs that might be found at risk.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.252 Program and School Requirements; Advisory Board.

*§215.7. Training Provider Advisory Boards.*

(a) All [~~Each licensed academy and each contractual~~] training providers approved by the commission must establish and maintain an advisory board, as required by law. To be established, this board must have at least three members who are appointed by the sponsoring organization. To be maintained, the active, appointed membership of the board must not fall below a quorum for more than 30 days.

(b) The board may have members who are law enforcement personnel, however, one-third of the members must be public members having the same qualifications, found in the Occupations Code, Chapter 1701.252, as any commissioner who is required by law to be a member of the general public. The chief administrator or head of the sponsoring organization and the designated training coordinator may only be ex-officio, non-voting members.

(c) The board must elect a chairman and may elect other officers and set its own rules of procedure. A quorum must be present in order to conduct business.

(d) A board must meet at least once each calendar year. More frequent meetings may be called by its chairman, the training coordinator, or the person who appoints the board.

(e) A board will keep written minutes of all meetings. These minutes must be retained for at least five years and a copy forwarded to the commission upon request.

(f) Board members will be appointed by the following authority:

(1) for an agency academy, by the chief administrator as defined in Rule [~~§~~] 211.1 of this title (relating to definitions);

(2) for a college academy, by the dean or other person who appoints the training coordinator;

(3) for a regional academy, by the head of the council of governments or other sponsoring entity holding the academy license from names submitted by chief administrators from that area; or

(4) for a contractual training provider, by the chief administrator.

(g) A member may be removed by the appointing authority.

(h) A board is generally responsible for advising on the development of curricula and any other related duty that may be required by the commission.

(i) The board must, as specific duties:

(1) effectively discharge its responsibilities and otherwise comply with commission rules;

(2) advise on the need to study, evaluate, and identify specific training needs;

(3) advise on the determination of the types, frequency, and location of courses to be offered; and

(4) advise on the establishment of the standards for admission, prerequisites, minimum and maximum class size, attendance, and retention.

(j) A board must advise on the establishment of admission standards, and determine the order of preference between employees or prospective appointees of the sponsoring organization and other persons, if any. No person may be admitted to a training course without meeting the admission standards. The admission standards for licensing courses must be available for review by the commission upon request.

(k) A board may, when discharging its responsibilities, request that a report be made or some other information be provided to them by a training or course coordinator.

(l) The effective date of this section is March 1, 2004. [~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

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Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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**37 TAC §215.9**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, section 215.9 by amending subsections (b) and (c) of this section to clarify the requirements for all training coordinators. Subsection (d) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be substantial fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all training coordinators meet the same requirements.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.251 Training Programs; Instructors.

*§215.9. Training Coordinator.*

(a) A training coordinator must hold a valid instructor license or certificate and must be a full-time paid employee.

(b) The training coordinator [~~of an academy~~] must:

(1) prepare, maintain, and submit the following reports within the time frame specified:

(A) reports training - to be submitted prior to the issuance of any endorsement [~~of eligibility~~] for a licensing examination for a course leading to a license and within 30 days of completion of each continuing education course;

(B) self-assessment reports as required by the commission;

(C) a copy of advisory board minutes to be submitted during an on-site evaluation;

(D) quarterly training calendars-schedules must be available for review or posted on the Internet no later than 30 days prior to the beginning of each calendar quarter or academic semester; [~~and~~]

(E) any other reports or records as requested by the commission;

(2) be responsible for the administration and conduct of each course, including those conducted at ancillary sites, and specifically:

(A) appointing and supervising qualified instructors;

(B) maintaining course schedules and course files, including lesson plans;

(C) securing and maintaining all facilities necessary to meet the inspection standards of this section;

(D) enforcing all admission, attendance, retention, and other standards set by the commission and the advisory board;

(E) distributing learning objectives to all students at the beginning of each course and ensure that all learning objectives are taught properly and evaluated, that all training is effective, and that no required instruction periods are consumed by matters that are frivolous or unrelated to the scheduled training;

(F) distributing a current version of the commission rules and law to all students at the time of application for admission [~~to the academy~~], and ensuring that a review of the rules of the commission pertaining to continuing education for licensees, annual firearms proficiency, reporting responsibilities of individuals, revocation, suspension and voluntary surrender of licenses, proficiency certificates and the law enforcement achievement awards are part of any course that may result in the issuance of a license;

(G) controlling the discipline and demeanor of each student and instructor during class;

(H) proctoring or supervising all examinations to ensure fair, honest results; and

(I) maintaining records of tests and other evaluation instruments for a period of five years.

(3) receive all commission notices on behalf of the raining provider [~~academy~~] and forward each notice to the appointing authority; and

(4) attend or have a designee attend each academy coordinator's workshop conducted by the commission.

(c) If the position of training [~~academy~~] coordinator becomes vacant, the commission may, at the discretion of the executive director and upon petition of the chief administrator of the training provider, [~~academy or sponsoring agency,~~] waive the requirement for a full-time paid and assigned training [~~academy~~] coordinator for a period not to exceed six months.

(d) The effective date of this section is March 1, 2004 [~~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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Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

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**37 TAC §215.13**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, section 215.13 by amending subsection (a) of this section to removed dated material. Subsection (b) and (c) of this section are amended to reflect the numbering change from subsection (a) of this section. Subsection (c) of this section is also amended to reflect the passing percentages of subsection (a) of this section with a longer time period. Subsection (f) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.254 Risk Assessment and Inspections.

*§215.13. Risk Assessment.*

(a) A law enforcement academy may be found at risk;

[~~(1) if the passing rate on a licensing examination for first attempts for any state fiscal year is less than 60 percent of the students completing an academy; ~~]

(1) [~~(2)~~] after January 1, 2003, if the passing rate on a licensing examination for first attempts for any state fiscal year is less than 70 percent of the students completing an academy;

(2) [~~(3)~~] if the passing rate on a licensing examination for all attempts for any state fiscal year is less than 70 percent of the students completing an academy;

(3) [~~(4)~~] after January 1, 2005, if the passing rate on a licensing examination for all attempts for any state fiscal year is less than 80 percent of the students completing an academy;

(4) [~~(5)~~] if commission required learning objectives are not taught;

(5) [~~(6)~~] if lesson plans for classes conducted are not on file;

(6) [~~(7)~~] if examination and other evaluative scoring documentation is not on file;

(7) [~~(8)~~] if the academy files false reports to the commission;

(8) [~~(9)~~] if the academy makes repeated errors in reporting;

(9) [~~(10)~~] if the academy does not respond to commission requests for information;

(10) [~~(11)~~] if the academy does not comply with commission rules or other applicable law;

(11) [~~(12)~~] if the academy does not achieve the goals identified in its application for a license;

(12) [~~(13)~~] if the academy does not meet the needs of the officers and law enforcement agencies served; or

(13) [~~(14)~~] if the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(b) A contractual provider may be found at risk;

(1) for the same reasons in subsection (a)(1)-(3) [~~§215.13 (a)(1)-(4)~~] if licensing courses or components are provided;

(2) if lesson plans for classes conducted are not on file;

(3) if examination and other evaluative scoring documentation is not on file;

(4) if the provider files false reports to the commission;

(5) if the provider makes repeated errors in reporting;

(6) if the provider does not respond to commission requests for information;

(7) if the provider does not comply with commission rules or other applicable law;

(8) if the provider does not achieve the goals identified in its application for a license or contract;

(9) if the provider does not meet the needs of the officers and law enforcement agencies served; or

(10) if the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(c) An academic provider may be found at risk:

(1) for the same reasons in subsection (a)(1)-(3) for any 3-year period; [~~if licensing examination results indicate a trend of low performance~~]

(2) if courses are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) if the commission required learning objectives are not taught;

(4) if the program files false reports to the commission;

(5) if the program makes repeated errors in reporting;

(6) if the program does not respond to commission requests for information;

(7) if the program does not comply with commission rules or other applicable law;

(8) if the program does not achieve the goals identified in its application for a license or contract;

(9) if the program does not meet the needs of the students and law enforcement agencies served; or

(10) if the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of education or failure to meet education needs for the service area.

(d) At risk training providers must follow commission directives.

(e) A training or educational program at risk must notify all students and potential students of their at risk status. The commission may take action to revoke their license or contract. The commission may choose not to renew a license or contract with a program that has been found to be at risk or the commission may renew the contract for a shorter period than stated in §215.1 of this title.

(f) The effective date of this section is March 1, 2004. [~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306798

Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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**37 TAC §215.15**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending section 215.15. The title is amended by limiting this section to enrollment standards. These amendments include changes to reflect the term individual as identified in 211.27. Subsection (a) of this section is amended to reflect the term basic licensing course as identified in 211.1 Definitions. Subsection (a) of this section is also amended to reflect part of the licensing requirements found in 217.1. The body of the rule was reorganized for clarification. Subsection (e) of this section was moved to another rule (215.3). Subsection (c) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section, as proposed, will be in effect there will be a positive benefit to the public by ensuring that individuals that do not meet the enrollment standards are prevented from enrolling.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.255 Enrollment Qualifications.

*§215.15. Enrollment Standards [~~and Training Credit~~].*

(a) In order for an individual [~~a person~~] to enroll in any basic licensing course [~~law enforcement training program~~] which provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) written documentation that the person is currently licensed by the commission; or

(2) if the person is not licensed by the commission, documentation that the individual has been subjected to a search of local, state and national records to disclose any criminal record;[:]

(A) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(B) [~~(A)~~] community supervision history:

*(i)* has never been on court-ordered community supervision or probation for any criminal offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

*(ii)* the commission may approve the application of an individual [~~a person~~] who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to enrollment if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

[~~(B) is not currently under indictment for any criminal offense;~~]

(C) conviction history:

*(i)* has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

*(ii)* the commission may approve the application of an individual [~~a person~~] who was convicted of a Class B misdemeanor at least five (5) years prior to enrollment if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(D) For purposes of this section, the commission will construe any court ordered community supervision, probation, or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

*(i)* another penal provision of Texas law; or

*(ii)* a penal provision of any other state, federal, military or foreign jurisdiction.

(E) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas law.

(F) [~~(D)~~] has never been convicted of any family violence offense;

(G) [~~(E)~~] is not prohibited by state or federal law from operating a motor vehicle;

(H) [~~(F)~~] is not prohibited by state or federal law from possessing firearms or ammunition; and

(I) [~~(G)~~] is a U.S. citizen.

[~~(b) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:~~]

[~~(1) another penal provision of Texas law; or~~]

[~~(2) a penal provision of any other state, federal, military or foreign jurisdiction.~~]

[~~(c) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas law.~~]

(b) [~~(d)~~] In order for an individual [~~a person~~] to enroll in any basic peace officer training program which provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) a high school diploma;

(2) a high school equivalency certificate and has completed at least 12 hours at an institution of higher education with at least a 2.0 grade point average on a 4.0 scale; or

(3) an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;

[~~(e) The commission will award training credit for any course conducted by a licensed academy as provided by commission rules unless:~~]

[~~(1) the course is not taught as required by commission rules and the advisory board;~~]

[~~(2) the training is not related to a commission license;~~]

[~~(3) the advisory board, the academy, the academy coordinator, the course coordinator, or the instructor substantially failed to discharge any responsibility required by commission rule; or~~]

[~~(4) the credit was claimed by deceitful means.~~]

(c) [~~(f)~~] The enrollment standards established in this section do not preclude the academy licensee from establishing additional requirements or standards for enrollment in law enforcement training programs.

(d) [~~(g)~~] The effective date of this section is March 1, 2004. [~~2003.~~]

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 October 15, 2003.

TRD-200306799
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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## CHAPTER 217. LICENSING REQUIREMENTS

### 37 TAC §217.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, section 217.3 by amending subsections (a), (b), (d) and (g) of this section. The amendment to (a) and (b) of this section is to reflect the term individual as identified in 211.27. Subsection (d) of this section is amended to reflect the term licensee as identified in 211.1 Definitions and to clarify the weapons proficiency requirements in Occupations

Code 1701.308. Subsection (g) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all peace officer applicants demonstrate weapons proficiency as required by Occupations Code 1701.308.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.308 Weapons Proficiency. 1701.255 Enrollment Qualifications

*§217.3. Application for License and Initial Report of Appointment.*

(a) An agency appointing an individual[~~a person~~] who does not hold a commission license must file an application for the appropriate license with the commission. The application must be approved with a license issuance date before the individual[~~person~~] is appointed or commissioned. The application must be completed, signed, and filed with the commission by the agency's chief administrator or designee.

(b) Except for an agency that has 20 or fewer employees or an agency that provides less than 24-hour-a-day service, an agency appointing an individual[~~a person~~] as a temporary emergency telecommunicator must file an application with the commission. The application must be approved with an appointment date before the individual[~~person~~] is appointed. The application must be completed, signed, and filed with the commission by the agency's chief administrator or designee.

(c) An application for a license or initial report of appointment must be submitted in an application format currently accepted by the commission.

(d) An agency that files an application for licensing must keep on file and in a format readily accessible to the commission a copy of the documentation necessary to show each licensee[~~officer, jailer, or public security officer~~] appointed by that agency met the minimum standards for licensing including weapons proficiency for peace officers.

(e) An agency must retain records required under subsection (d) of this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(f) An agency which submits an application for an individual must report to the commission any failure to appoint that individual in the reported capacity within 30 days of the reported date of appointment. Such report must be made in a currently accepted commission format that reports termination.

(g) The effective date of this section is March 1, 2004.[~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306804

Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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**37 TAC §217.5**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, section 217.5 by adding subsection (a)(9) and subsection (c) of this section, which clarifies the commission's authority to reject and cancel applications for licensing or new appointment when the commission has knowledge that the individual does not meet background standards and when licensing documentation contains incorrect or incomplete information regarding applicants criminal history. Subsection (d) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect that there will a positive benefit to the public by protecting the public from corrupt individuals. It will help meet public and legislative expectations that the commission serves the public in an important role in the affirmative protection of the public from unscrupulous individuals.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

No other statutes are affected by this proposed rule amendment.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.308 Weapons Proficiency.

*§217.5. Denial and Cancellation.[~~Denial~~]*

(a) The commission may deny an application for any license and may refuse to accept a report of appointment if the:

(1) applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) applicant has not affixed any required signature;

(3) required forms or documentation are incomplete, illegible, or are not attached;

(4) application is not submitted or signed by a chief administrator, or designee with authority to appoint the applicant to the position reported;

(5) application is not submitted by the appointing agency or entity;

(6) agency reports the applicant in a capacity that does not require the license sought;

(7) agency fails to provide documentation, if requested, of the agency's creation or authority to appoint persons in the capacity of the license sought or the agency is without such authority; or

(8) application contains a false assertion by any person; or[.]

(b) If an application is found to be incorrect or subject to denial under (a), any license issued to the applicant by the commission is subject to cancellation [~~or recall~~].

(c) Any such document may expire or be cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated. Mere possession of the physical document does not necessarily mean that the person:

(1) currently holds, has ever held, or has any of the powers of the office indicated on the document; or

(2) still holds an active, valid license, or certificate.

(d) [~~(c)~~] The effective date of this section is March 1, 2004[~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306805

Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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**37 TAC §217.7**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, section 217.7 by amending subsections (c) and (e) of this section to clarify weapons proficiency requirements for peace officer licensees. Other subsections are amended to reflect the term individual as identified in 211.27. Subsection (e) of this section is amended to clarify the time period between appointments. Subsection (e)(4) of this section is amended to implement a change in the number of fingerprint cards required. This change is a result of an agreement between the Department of Public Safety and the Commission. Subsection (e)(3) of this section is also amended to clarify the criminal history requirements. Subsection (i) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that licensees meet the applicable requirements.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.303 License Application; Duties of Appointing Entity.

*§217.7. Reporting the Appointment and Termination of a Licensee.*

(a) Before hiring or appointing a licensee, an agency shall contact the commission, electronically or in writing, to determine whether the commission has employment history records on that individual[~~person~~]. If employment history records exist, then the agency shall contact the previous employing agency(ies) in writing to request employment information.

(b) In order to receive information and/or a copy of the termination form from employment history records regarding the reasons for resignation or termination, the inquiring agency must request the information in writing on the agency's letterhead. The request must be signed by the agency chief administrator or designee. The request must be accompanied by a commission form that authorizes release of that information. This form must be signed and sworn to by the individual [~~person~~] who is the subject of the report.

(c) An agency that appoints an individual [~~a person~~] who already holds a valid, active license appropriate to that position must notify the commission of such appointment not later than 30 days after the date of appointment. The appointing agency must have on file documentation that the licensee is compliant with weapons qualification according to Rule 217.21 within the last 12 months. This notification

must be made in the currently prescribed commission format that reports appointment. This format must be completed, and filed with the commission by the agency's chief administrator.

(d) Before appointing a licensee whose license has expired, an agency shall ensure that the individual [~~person~~] meets the current minimum standards for licensure.

(e) If the appointment is made after a 180-day break in service [~~appointment~~], the agency must have the following on file and readily accessible to the commission:

(1) a new criminal history check by name, sex, race and date of birth from both TCIC and NCIC;

(2) a new declaration of psychological and emotional health;

(3) a new declaration of lack of any drug dependency or illegal drug use; and

(4) one [~~two~~] completed applicant fingerprint card [~~cards~~] or, pending receipt of such card [~~cards~~], an original sworn, notarized affidavit by the applicant[~~:~~] of his or her complete criminal history; such affidavit to be maintained by the agency while awaiting the return of completed applicant fingerprint card; and

[~~(A) of his or her complete criminal history, or~~]

[~~(B) that he or she meets the current academy enrollment standards. Such affidavit may be maintained by the agency while awaiting the return of completed applicant fingerprint card.~~]

(5) for peace officers, weapons qualification according to Rule 217.21 within the last 12 months.

(f) An agency must retain records kept under this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(g) When an individual [~~a person~~] licensed by the commission resigns from appointment or employment with an agency or if [~~a person's~~] an individual's appointment or employment is terminated for any reason, the agency shall submit a report to the commission in the currently prescribed commission format that reports resignation or termination, including all emergency telecommunicators. The report shall be submitted within 30 days following the date of resignation or termination. The report shall include an explanation of the circumstances under which the individual [~~person~~] resigned or was terminated. The agency shall provide the individual [~~person~~] who is the subject of the report a copy of the report. The individual [~~person~~] may submit a written statement to the commission to contest or explain any matters contained in the report.

(h) A report or statement submitted under this section is exempt from disclosure under the Public Information Act, Chapter 552, Government Code, unless the individual [~~person~~] resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, and is subject to subpoena only in a judicial proceeding.

(i) The effective date of this section is March 1, 2004 [~~September 1, 2002~~].

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 October 15, 2003.

TRD-200306806
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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**37 TAC §217.9**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, section 217.9 by changing the text of §217.9(a) to require that training courses merely be "recognized," not "approved" by the Commission. This change removes the misleading implication that, in order to be considered a "continuing education course," a training course must go through a detailed approval process; and therefore more clearly indicates the Commission's role in accepting course credits. Subsection (d) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by encouraging the development and use of a wide variety of training courses and increasing enrollment in them.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

No other statutes are affected by this proposed rule amendment.

*§217.9. Continuing Education Credit for Licensees.*

(a) A continuing education course is any training course that is recognized [~~approved~~] by the commission, specifically:

(1) legislatively required continuing education curricula and learning objectives developed by the commission:

(2) training in excess of basic licensing course requirements;

(3) training courses consistent with assigned duties; or

(4) training not included in a basic licensing course.

(b) The commission may refuse credit for:

(1) a course which does not contain a final examination or other skills test, if appropriate, as determined by the training provider;

(2) annual firearms proficiency;

(3) an out of state course not approved by that state's POST;

(4) training that fails to meet any commission established length and published learning objectives;

(5) an instructor claiming credit for a basic licensing course or more than one presentation of a non-licensing course by an instructor, per 24 month unit of a training cycle; or

(6) course(s) claimed by deceitful means.

(c) The training provider or agency must report to the commission and keep on file in a format readily accessible to the commission, a copy of all continuing education course training reports.

(d) The effective date of this section is March 1, 2004 [ ~~2002~~].

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 October 15, 2003.

TRD-200306807

Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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**37 TAC §217.11**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending 217.11. The body of the rule is reorganized for clarification. Subsection (f) of this section to reflect the training requirements from Senate Bill 473. Subsection (l) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that peace officers have training in identity theft.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.253 School Curriculum.

*§217.11. Legislatively Required Continuing Education for Licensees.*

(a) Each agency that appoints or employs peace officers, reserve law enforcement officers, jailers, or public security officers shall provide each peace officer, reserve law enforcement officer, jailer, or public security officer it appoints or employs a continuing education program at least once every 24-month unit of a training cycle.

(b) The legislatively required continuing education program for individuals licensed as peace officers shall consist of 40 hours of training every 24-month unit of a training cycle. This rule does not limit the number of hours of continuing education an agency may provide to each peace officer, reserve law enforcement officer, jailer, or public security officer it appoints or employs.

(c) Part of the legislatively required peace officer training must include the curricula and learning objectives developed by the commission, to include:

(1) civil rights, racial sensitivity, and cultural diversity during each current training cycle;

(2) the recognition and documentation of cases that involve child abuse or neglect, family violence, sexual assault, issues concerning sex offender characteristics during each current training cycle. If an agency chief administrator determines these subjects to be inconsistent with the peace officer's assigned duties, the chief administrator may substitute other training determined to be consistent with the officer's assigned duties and report the substitution to the commission; and

(3) supervision issues for each peace officer appointed to their first supervisory position, this training must be completed within 24 months following the date of appointment as a supervisor.

(d) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall meet the requirements in subsection (c)(1) of this section.

(e) Each constable and deputy constable shall also complete a 20-hour course of training in civil process during each current training cycle. The commission may waive the requirement for civil process training if the constable submits a written request for a waiver because of hardship and the commission determines that a hardship exists.

(f) Individuals licensed as peace officers shall attend a course, developed by the commission, on identify theft no later than September 1, 2005.

(g) Individuals licensed as peace officers shall complete the legislatively required continuing education program required under this section beginning in the first complete 24-month unit immediately following the date of licensing.

(h) The following types of licensees are exempt from the training requirements listed in (b) and (c):

(1) an honorably retired commissioned officer of the Department of Public Safety who is a special ranger under Section 411.023, Government Code; or

(2) a retired state employee and who holds a permanent license issued before January 1981 and that was current on January 1, 1995; or

(3) a special game warden commissioned by the Texas Parks and Wildlife Department under Section 11.0201, Parks and Wildlife Code.

(i) Police chiefs may substitute the Bill Blackwood training program(s) required by Section 96.641, Education Code for the training requirements listed in (b) and (c).

(j) [~~(f)~~] The commission shall provide notice to agencies and licensees of impending non-compliance with the legislatively required continuing education. Such notice will be provided not later than 90 days [~~six months~~] prior to the expiration of the current training unit. [~~cycle.~~]

(k) [~~(g)~~] The commission may suspend or deny renewal of a license for failure to complete the legislatively required continuing education program at least once every training cycle.

(l) [~~(h)~~] The commission may take action against a licensee for failure to complete the required training in either or both of the 24-month units within a training cycle.

[~~(i) Individuals licensed as peace officers shall complete the legislatively required continuing education program required under this section beginning in the first complete 24 month unit immediately following the date of licensing.~~]

[~~(j) Individuals licensed as peace officers shall attend a course, developed by the commission, on asset forfeiture no later than September 1, 2002.~~]

[~~(k) Individuals licensed as peace officers shall attend a course, developed by the commission, on racial profiling no later than September 1, 2003.~~]

[~~(l) All peace officers must meet all continuing education requirements except where exempt by law.~~]

(m) The effective date of this section is March 1, 2004.[ ~~2002.~~]

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 October 15, 2003.

TRD-200306801

Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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**37 TAC §217.19**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, section 217.19 by amending subsections (g) and (h) of this section. Subsection (g) of this section is amended to clarify the weapons proficiency requirements in Occupations Code 1701.308. Subsection (h) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all peace officer applicants demonstrate weapons proficiency as required by Occupations Code 1701.308.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.308 Weapons Proficiency.

*§217.19. Reactivation of a License.*

(a) The commission will place all licenses in an inactive status when the licensee has neither been reported to the commission as appointed for more than two years after:

(1) the last report of termination, or

(2) the date of last reactivation, nor

(3) met all the continuing education requirements.

(b) Individuals with basic licensure training over two years old must meet the requirements of (g) before they may be appointed.

(c) Individuals with basic licensure examination results over two years old must meet the requirements of (g) before they may be appointed.

(d) The holder of an inactive license is unlicensed for purposes of these sections and the Occupations Code, Chapter 1701.

(e) This section includes any permanent peace officer qualification certificate with an effective date before September 1, 1981.

(f) This section includes any jailer licenses issued after March 1, 2001.

(g) Before individuals with inactive licenses may be appointed they must:

(1) meet the current licensing standards, with successful completion of a basic licensing course current at the time of initial licensure; fulfilling this requirement;

(2) successfully complete the legislatively required continuing education for the current training cycle;

(3) make application and submit any required fee(s) for an endorsement in the format currently prescribed by the commission;

(4) obtain an endorsement, issued by the commission, giving the individual eligibility to take the required licensing examination; and

(5) meet the requirements of Rule 217.3; and

(6) [~~(5)~~]pass the licensing examination for the license to be reactivated. After three failures, or if the endorsement expires, the individual must re-qualify by repeating the entire training course for the license sought. [~~If failed three times the applicant may not be issued another endorsement of eligibility until successful completion of the current basic licensure course.~~]

(h) The effective date of this section is March 1, 2004.[~~September 1, 2002~~]

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 October 15, 2003.

TRD-200306802
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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**37 TAC §217.21**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, section 217.21 by adding subsections (c)(4) of this section. Subsection (c)(4) of this section is amended to recognize the use of a patrol rifle by some law enforcement agencies. Subsection (d) of this section is changed to reflect the term weapons from section 211.1 Definitions. Subsection (e) of this section is amended to clarify the exemption allowed by Occupations Code 1701.355(b). Subsection (f) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that licensees are proficient will all weapons used on or off duty. The Commission reviewed other states and found that seven had no requirements, two had requirements for handguns only, while only one had rifle requirements. Departments in Texas were also queried about patrol rifle qualifications and the proposed requirements were an approximate midpoint of the various departmental requirements. The Commission has also received requests for guidelines from law enforcement agencies have added this new piece of equipment.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.355 Continuing Demonstration of Weapons Proficiency.

*§217.21. Firearms Proficiency Requirements.*

(a) Each agency or entity that employs at least two peace officers shall:

(1) require each peace officer that it employs to successfully complete the current firearms proficiency requirements at least once each year;

(2) designate a firearms proficiency officer to be responsible for the documentation of annual firearms proficiency. The documentation for each officer shall include:

(A) date of qualification;

(B) identification of officer;

(C) firearm manufacturer, model;

(D) results of qualifying; and

(E) course(s) of fire.

(3) keep on file and in a format readily accessible to the commission a copy of all records of this proficiency.

(b) The annual firearms proficiency requirements shall include:

(1) an external inspection by the proficiency officer, range officer, firearms instructor, or gunsmith to determine the safety and functioning of the weapon(s);

(2) a proficiency demonstration in the care and cleaning of the weapon(s) used; and

(3) a course of fire that meets or exceeds the minimum standards.

(c) The minimum standards for the annual firearms proficiency course of fire shall be:

(1) handguns - a minimum of 50 rounds, including at least five rounds of duty ammunition, fired at ranges from point-blank to at least 15 yards with at least 20 rounds at or beyond seven yards, including at least one timed reload;

(2) shotguns - a minimum of five rounds of duty ammunition fired at a range of at least 15 yards;

(3) rifles - a minimum of 20 rounds of duty ammunition fired at a range of at least 100 yards, however an agency may, in its discretion, allow a range of less than 100 yards but not less than 50 yards if the minimum passing percentage is raised to 90;

(4) patrol rifles - a minimum of 30 rounds of duty ammunition fired at a range of at least 50 yards, including at least one timed reload; however, an agency may, in its discretion, allow a range of less than 50 yards but not less than 10 yards if the minimum passing percentage is raised to 90;

(5) [~~(4)~~]fully automatic weapons - a minimum of 30 rounds of duty ammunition fired at ranges from seven to at least 10 yards,

including at least one timed reload, with at least 25 rounds fired in full automatic (short bursts of two or three rounds), and at least five rounds fired semi-automatic, if possible with the weapon.

(d) The minimum passing percentage shall be 70 for each firearm[ ~~weapon~~].

(e) The executive director may, upon written agency request, waive a peace officer's demonstration of weapons proficiency based on a determination that the requirement causes a hardship [~~any standard contained in this section~~].

(f) The effective date of this section is March 1, 2004 [~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306800
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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## CHAPTER 217. CONTRACT JAILER CERTIFICATION

### 37 TAC §217.23

*(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 Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by deleting section 217.23 Training Standards for Conditional Reserve. In 2001, the Commission ended conditional reserve licenses phasing out the training for the basic and advanced reserves between 2002 and 2004. January 1, 2004 is the last date to report the reserve courses to the commission. Academies may teach the basic peace officer course in any segments that they wish, but the commission does not want it reported until the complete course is successfully finished.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by removing unnecessary

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The repeal rule as proposed is in compliance with the Texas Occupations Code §1701.307 Issuance of License.

*§217.23. Training Standards for Conditional Reserve License.*

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 October 15, 2003.

TRD-200306788
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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## CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS OF ELIGIBILITY

### 37 TAC §219.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §219.1 by clarifying terminology and including an expiration date in the requirements of an endorsement. Subsection (j) was added to clarify the requirements of an academic alternative endorsement. Subsection (k) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the amended section.

The Commission has determined that for the each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the amended section.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be a positive benefit to the public by ensuring that individuals attempt the exam in a timely manner.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the amended section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

This amendment is proposed in compliance with the Texas Occupations Code §1701.304, Examination.

*§219.1. Eligibility to Take State Examinations.*

(a) To be eligible to take a state licensing examination, a student must have a valid endorsement [~~of eligibility~~].

(b) A valid endorsement is based on:

(1) a previously completed basic licensing course; or

(2) out-of-state training.

(c) [~~(b)~~] A valid endorsement [~~of eligibility~~] shall:

(1) be in the approved commission format;

(2) be a completed original document bearing all required signatures,

(3) state that the examinee has met the current minimum training standards appropriate to the license sought; and

(4) include a date of issue and an expiration date.

(d) [~~(c)~~] For an endorsement [~~of eligibility~~] to be or remain valid:

(1) it must not be issued in error or based on false or incorrect information; specifically, the applicant must meet the current enrollment standards; or if previously licensed, have met the enrollment standards at initial licensure; and

(2) it must be presented before its expiration date [~~two years from the date of issue~~].

(e) [~~(d)~~] An endorsement [~~of eligibility~~] to take an examination is issued by a training [~~an academy~~] coordinator, the registrar of a licensed academic alternative provider, the executive director of the commission, or a person authorized by the executive director. Duplicate endorsements may only be issued by the executive director of the commission.

[~~(e) An endorsement of eligibility is based on:~~]

[~~(1) a previously completed basic licensing course;~~]

[~~(2) an expired examination result;~~]

[~~(3) out-of-state training; or~~]

[~~(4) a duplicate endorsement may only be issued by the executive director of the commission.~~]

(f) (No change.)

(g) In order to receive an endorsement [~~of eligibility~~] from the commission, individuals must meet all current requirements, to include submitting any required application currently prescribed by the commission, requested documentation, and any required fee.

(h) (No change.)

(i) Once an initial endorsement [~~of eligibility~~] is issued, an examinee will be allowed three opportunities to pass the examination while the examinee's endorsement remains valid. After three failures, the examinee must requalify by repeating the entire training course for the license sought. If an attempt is invalidated for any reason, except for a commission error, that attempt will count as one of the three opportunities.

(j) Once an initial endorsement from academic alternative provider expires from either date or failure, individuals will be required to requalify by completing the standard coursework for the license sought.

(k) [~~(j)~~] The effective date of this section is March 1, 2004 [~~2003~~].

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 October 15, 2003.

TRD-200306808
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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**37 TAC §219.3**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §219.3 by clarifying terminology in subsection (b)(10). Subsection (c) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the amended section.

The Commission has determined that for the each year of the first five years the amendement as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the amended section.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be a positive benefit to the public by clarifying the rule.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the amended section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment is proposed in compliance with the Texas Occupations Code §1701.304, Examination.

*§219.3. Examination Administration.*

(a) (No change.)

(b) A member of the commission staff, a test administrator, or a proctor shall:

(1) - (9) (No change.)

(10) record the fact of examination on the endorsement [~~of eligibility~~] and collect any fraudulent or questionable endorsement; and

(11) (No change.)

(c) The effective date of this section is March 1, 2004 [~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306809
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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**37 TAC §219.5**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §219.5 by amending subsection (a)(1) for language cleanup on endorsement striking the phrase "of eligibility," and by adding language to subsection (b) which requires the filing of criminal charges in Travis County against anyone who steals or attempts to steal any portion of a licensing examination or who commits a fraudulent act concerning a licensing examination. Subsection (c) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the amended section.

The Commission has determined that for the each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the amended section.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will a positive benefit to the public by discouraging the compromising of the examination process.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the amended section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment is proposed in compliance with the Texas Occupations Code §1701.304, Examination.

*§219.5. Examinee Requirements.*

(a) To be eligible to sit for an examination, an examinee must:

(1) possess and display at the examination site a valid endorsement [~~of eligibility~~] for the specific type of examination sought;

(2) - (6) (No change.)

(b) The commission may deny or revoke any license or certificate held by a person who violates any of the provision of this section. The commission shall file a criminal complaint against any individual who steals or attempts to steal any portion of the examination, or who engages in any fraudulent act relating to the examination process.

(c) The effective date of this section is March 1, 2004 [~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306810
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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## CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

**37 TAC §221.3**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §221.3 by amending subsections (a), (b), and (e). Subsection (a) is amended by adding a requirement for the successful completion of a field training program before receiving a basic proficiency certificate. Subsection (a) is further amended to clarify the training requirements for peace officers. Subsection (b) is amended by adding a requirement for Identify Theft training as required by §1701.253 of the Occupations Code. Subsection (e) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the amended section.

The Commission has determined that for the each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the amended section.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be a positive benefit to the public by having better trained officers. Committee members from the profession recommended and support the field training requirement.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the amended section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment is proposed in compliance with the Texas Occupations Code §1701.402, Proficiency Certificates.

*§221.3. Peace Officer Proficiency.*

(a) To qualify for a basic peace officer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) (No change.)

(2) successful completion of a field training course and a course that includes [~~of~~] instruction provided by the employing agency on federal and state statutes that relate to employment issues affecting peace officers [~~and jailers~~], including:

(A) - (G) (No change.)

(b) To qualify for an intermediate peace officer proficiency certificate, an applicant must meet all proficiency requirements including:

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

(3) if the basic peace officer certificate was issued or qualified for on or after January 1, 1987, the licensee must also complete all of the current intermediate peace officer certification courses, which include:

(A) - (E) (No change.)

(F) Asset Forfeiture; [~~and~~]

(G) Racial Profiling; and[~~.~~]

(H) Identity Theft.

(c) - (d) (No change.)

(e) The effective date of this section is March 1, 2004 [~~2002~~].

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 October 15, 2003.

TRD-200306811

Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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**37 TAC §221.5**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §221.5 by amending subsections (a) and (e). Subsection (a) is amended by adding a requirement for the successful completion of a field training program before receiving a basic proficiency certificate. Subsection (a) is further amended to clarify the training requirements are for jailers. Subsection (e) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the amended section.

The Commission has determined that for the each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the amended section.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be a positive benefit to the public by having better trained officers. Committee members from the profession recommended and support the field training requirement.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the amended section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment is proposed in compliance with the Texas Occupations Code §1701.402, Proficiency Certificates.

*§221.5. Jailer Proficiency.*

(a) To qualify for a basic jailer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) (No change.)

(2) successful completion of a field training course and a course that includes [~~of~~] instruction provided by the employing agency on federal and state statutes that relate to employment issues affecting [~~peace officers and~~] jailers, including:

(A) - (G) (No change.)

(b) - (d) (No change.)

(e) The effective date of this section is March 1, 2004 [~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306812

Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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**37 TAC §221.13**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §221.13 by amending subsections (a) and (d). Subsection (a) is amended by adding a requirement for the successful completion of a field training program before receiving a basic proficiency certificate. Subsection (d) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the amended section.

The Commission has determined that for the each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the amended section.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be a positive benefit to the public by having better trained emergency telecommunicators. Committee members from the profession recommended and support the field training requirement.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the amended section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment is proposed in compliance with the Texas Occupations Code §1701.402, Proficiency Certificates.

*§221.13. Emergency Telecommunications Proficiency.*

(a) To qualify for a basic telecommunications proficiency certificate, an applicant must meet all proficiency requirements including:

(1) successful completion of a 40-hour course developed or approved by the commission; [~~and~~]

(2) successful completion of a departmental field training course; and

(3) [~~(2)~~] one year of experience in public safety telecommunications.

(b) - (c) (No change.)

(d) The effective date of this section is March 1, 2004 [~~2002~~].

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 October 15, 2003.

TRD-200306813
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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**37 TAC §221.19**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §221.19. Subsection (a)(1) is amended by expanding this section to include other commission issued license holders. Subsection (b) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the amended section.

The Commission has determined that for the each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the amended section.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect there will be a positive benefit to the public by allowing individuals with other types of licenses to receive this proficiency certificate.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the amended section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment is proposed in compliance with the Texas Occupations Code §1701.402, Proficiency Certificates.

*§221.19. Firearms Instructor Proficiency.*

(a) To qualify for a firearms instructor proficiency certificate, an applicant must meet all proficiency requirements including:

[~~(1) currently employed or designated by the agency chief administrator or academy coordinator as a firearms instructor;~~]

(1) [~~(2)~~] at least three years experience as a licensee [~~law enforcement officer~~] or a firearms instructor;

(2) [~~(3)~~] currently holds an instructor license or certificate issued by the commission; and

(3) [(4)] successful completion of the commission's [current] firearms instructor course.

(b) The effective date of this section is March 1, 2004 [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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306814
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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**37 TAC §221.31**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes a new rule to Title 37, Texas Administrative Code by adding §221.31. The title is added due to the addition of Occupations Code §1701.357.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section, as proposed, will be in effect there will be a positive benefit to the public by allowing retired peace officers from selected law enforcement agencies to receive this proficiency certificate.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for a new rule under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with the Texas Occupations Code §1701.357 Weapons Proficiency for Certain Retired Peace Officers and Federal Criminal Investigators.

*§221.31. Retired Peace Officer Firearms Proficiency.*

(a) The head of a sheriff's office, constable's office, city marshal, municipal department, or the Parks and Wildlife Commission may issue a proficiency certificate to an honorably retired peace officer in accordance with Occupations Code 1701.357.

(b) The head of a state law enforcement agency may issue a proficiency certificate to an honorably retired special agent from the Federal Bureau of Investigation or Federal Drug Enforcement Agency in accordance with Occupations Code 1701.357.

(c) The minimum qualification requirements shall be the same as Rule 217.21(c).

(d) The effective date of this section is March 1, 2004.

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 October 15, 2003.

TRD-200306785
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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## CHAPTER 223. ENFORCEMENT

**37 TAC §223.13**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §223.13 by adding language to subsection (d) of this section, which requires any voluntary surrender of license document submitted to the Commission to be notarized by a notary public. Subsection (h) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by eliminating appeals to the Commission by licensees who have claimed that they were forced, coerced or unaware of the document that they signed and submitted to the Commission.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code §1701.501 Disciplinary Action.

*§223.13. Voluntary Surrender of License.*

(a) A licensee may voluntarily surrender a license:

(1) as part of an employee termination agreement;

(2) as part of a plea bargain to a criminal charge;

(3) as part of an agreed settlement to commission action; or

(4) for any other reason.

(b) A license may be surrendered either permanently or for a stated term.

(c) Effective dates.

(1) The beginning date for any surrender shall be the date stated in the request or, if none, the date it was received by the commission.

(2) A term surrender shall have its ending date stated in the request.

(3) Any request without a stated ending date shall be construed as a permanent surrender.

(4) A permanent surrender shall have no ending date.

(d) A licensee may voluntarily surrender any license by sending, or causing to be sent, a signed, notarized, written request to the executive director, who may accept or reject the request. The signed written request shall indicate that the licensee understands and has knowledge of the consequences of the document being signed. The executive director may accept requests for voluntary surrender submitted to the commission in any other form that indicates the licensee intends to voluntarily surrender the license to the commission. The executive director may liberally construe the intent of any request and may, specifically, construe the surrender of any single commission license to be a surrender of all other licenses held unless the request expressly states otherwise. The surrender should include a summary of the reason for the surrender.

(e) If accepted, the licensee is no longer licensed under either type of surrender:

(1) effective on the beginning date of the surrender; and

(2) except for permanent surrenders, until such person applies for and meets the requirements of a new license.

(f) In case of such application for reinstatement, the executive director:

(1) shall deny the new license based upon any failure to meet the current minimum standards for licensing;

(2) may deny a new license of the same or any other type based solely upon a voluntary surrender:

(A) if permanent; or

(B) if for a term that has not yet expired;

(3) may approve the reinstatement and may give notice to any agency or individual named in the original surrender and then may impose any previously agreed conditions (such as suspensions, probated terms of suspension, etc.).

(g) The executive director shall inform the commission of any of the following that have occurred since the last meeting:

(1) any surrender that was accepted; and

(2) any application for reinstatement that was granted or denied.

(h) The effective date of this section is March 1, 2004. [~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306815

Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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# CHAPTER 225. CONTRACT JAILER CERTIFICATION

**37 TAC §225.1**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §225.1 by amending subsections (a) and (e) of this section. The amendment to (a) and (e) of this section is to clarify that jailers or temporary jailers appointed by a contract jail facility must submit a fee. Subsections (b), (c), and (d) of this section were added to clarify reporting responsibilities of contract jail facilities. Subsection (f) of this section is added to clarify the continuing education requirements. Subsection (g) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will be a positive benefit to licensees by reducing fees and paperwork.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Government Code §511.0092 Contracts for Out-Of-State Inmates.

*§225.1. Issuance of [~~Contract~~] Jailer License through a Contract Jail Facility.*

(a) The commission shall issue a [~~contract~~] jailer license to [~~a person~~] an individual appointed by a contract jail facility who meets all the minimum standards for jailer licensure, and submits both the current commission application and any required fees.

(b) A contract jail facility that appoints an individual who already holds a valid, active jailer license shall meet the appointment requirements of Rule 217.7, including submitting any required fee.

(c) Before appointing a licensee whose license has expired, a contract jail facility shall meet the appointment requirements of Rule 217.7, including submitting any required fee, and ensure that the individual meets the current minimum standards for licensure.

(d) A contract jail facility that appoints an individual with a 180-day break in service shall meet the appointment requirements of Rule 217.7, including submitting any required fee.

(e) [~~(b)~~] The commission shall issue a temporary [~~contract~~] jailer license to [~~a person~~] an individual appointed by a contract jail facility who meets all the minimum standards for licensure except for training and testing , and submits both the current commission application and any required fees. A temporary [~~contract~~] jailer license expires 12 months from the original [ ~~certification~~] issue date, and may not be reissued.

(f) Individuals licensed as jailers appointed by a contract jail facility shall meet the continuing education requirements in Rule 217.11.

[~~(c) A contract jailer license expires 24 months from the date of original issuance and may be renewed upon expiration, unless the license has been revoked, is currently suspended, or has been voluntarily surrendered a contract jailer must:~~]

[~~(1) submit a completed contract jailer license renewal application prescribed by the commission, including documentation that the licensee has completed the required continuing education training within the preceding training cycle and~~]

[~~(2) pay any required fee.~~]

(g) [~~(d)~~] The effective date of this section is March 1, 2004. [~~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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306816

Edward T. Laine

Chief, Professional Standards and Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: March 1, 2004

For further information, please call: (512) 936-7717

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**37 TAC §225.3**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes a new rule to Title 37, Texas Administrative Code by adding §225.3. The new rule establishes application standards, including fees, for medical corporations.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be fiscal implications for hospital districts identified in Senate Bill 1652 and Senate Concurrent Resolution 71 as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section, as proposed, will be in effect there will be a positive benefit to the public by ensuring that the security officers for hospital districts meet the same licensing standards as peace officers.

The Commission has determined that for each year of the first five year the section as proposed will be in effect the proposed new rule has a fee, however the fee will be paid by the law enforcement agency and there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for a new rule under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with the amended Texas Occupations Code §51.214 Security Officers for Medical Corporations in Certain Municipalities

*§225.3. Issuance of Peace Officer License through a Medical Corporation.*

(a) The commission shall issue a peace officer license to an individual appointed by a medical corporation who meets all the minimum standards for peace officer licensure, and submits both the current commission application and any required fees.

(b) A medical corporation that appoints an individual who already holds a valid, active peace officer license shall meet the appointment requirements of Rule 217.7, including submitting any required fee.

(c) Before appointing a licensee whose peace officer license has expired, a medical corporation shall meet the appointment requirements of Rule 217.7, including submitting any required fee, and ensure that the individual meets the current minimum standards for licensure.

(d) A medical corporation that appoints an individual with a 180-day break in service shall meet the appointment requirements of Rule 217.7, including submitting any required fee.

(e) Individuals licensed as peace officers appointed by a medical corporation shall meet the continuing education requirements in Rule 217.11.

(f) The effective date of this section is March 1, 2004.

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 October 15, 2003.

TRD-200306786
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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## CHAPTER 229. TEXAS PEACE OFFICERS' MEMORIAL ADVISORY COMMITTEE

**37 TAC §229.1**

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §229.1. Subsection (a) of this section is amended to reflect the changes made by SB 1567. Subsection (b) of this section is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that the rules reflect the changes made to the Texas Peace Officers' Memorial.

The Commission has determined that for each year of the first five year the section as proposed will be in effect, there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

This section as proposed for amendment is in compliance with the Texas Occupations Code Chapter 3105 Texas Peace Officers' Memorial.

*§229.1. General Eligibility of Deceased Texas Peace Officers.*

(a) A deceased Texas peace officer, killed in the line of duty, is eligible for inclusion on the Texas peace officers' memorial if the person was:

(1) a Texas peace officer among those listed under the Texas Code of Criminal Procedure, Article 2.12;

(2) a Texas peace officer among those licensed by the Texas Commission on Law Enforcement Officer Standards and Education, under the Government Code, Chapter 415, or Occupations Code 1701 a federal law enforcement officer or special agent performing duties in this state, including those officers under Article 2.122, Code of Criminal Procedure;

(3) a Texas peace officer among those listed under the Texas Education Code;

(4) a Texas peace officer among those named as such by other Texas law;

(5) a Texas peace officer who, in historical perspective, would be eligible under any of the preceding criteria; or

(6) a Texas corrections officer employed or appointed by a municipal, county or state penal institution.

~~[(b) If the supported finding is that the Texas peace officer died as a result of infectious disease contracted while lawfully performing official duties, or by exposure to hazardous materials or conditions while lawfully performing official duties, the Texas peace officer is eligible for inclusion.]~~

(b) ~~[(c)]~~ The effective date of this section as amended shall be March 1, 2004. ~~[August 1, 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.

Filed with the Office of the Secretary of State on October 15, 2003.

TRD-200306817
Edward T. Laine
Chief, Professional Standards and Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2004
For further information, please call: (512) 936-7717

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

### CHAPTER 44. CLIENT MANAGED PERSONAL ATTENDANT SERVICES

The Texas Department of Human Services (DHS) proposes new Chapter 44, concerning Client Managed Personal Attendant Services, consisting of Subchapter A, General Information, §§44.1 - 44.4; Subchapter B, Responsibilities of All Provider Agencies, Division 1, Provider Agency Responsibilities, §44.11; Division 2, Attendant Requirements, §44.21; Division 3, Eligibility, Referral, and Assessment; §§44.31 - 44.33; Division 4, Service Initiation, §§44.41 - 44.43; Division 5, Reassessment, §44.51 and §44.52; Division 6, Co-payment Determination, §§44.61 - 44.65; Division 7, Tasks, §44.71 and §44.72; Subchapter C, Provider Agency Responsibilities in Payment Models, §§44.81 - 44.83; Subchapter D, Client Responsibilities in Payment Models, §§44.91 - 44.94; Subchapter E, Service Suspension, Termination, and Dispute Resolution, §§44.101 - 44.107; and Subchapter F, Record Keeping and Reimbursement, §44.111 and §44.112.

The purpose of the new sections is to rewrite the rules concerning Client-Managed Attendant Services that currently are in DHS's Chapter 48, Subchapter E, in plain English question-and-answer format and place them in their own chapter. The new sections incorporate existing policy into the DHS rule base, make reasons for service suspension consistent with other Community Care for Aged and Disabled programs, list financial records facilities are required to keep for audit purposes, and expand the definitions section.

Gordon Taylor, 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 provider agencies, facilities, and the public can more easily access and understand. Rule consistency and clarity will help provider agencies and agency staff ensure quality services for clients. There is no 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 policies reflected in this proposal 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 Steve Schoen at (512) 438-2622 in DHS's Community Care for Aged and Disabled section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-238, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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 INFORMATION

**40 TAC §§44.1 - 44.4**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001 - 22.038.

*§44.1. What is the purpose of this chapter?*

This chapter establishes requirements for agencies that contract to provide attendant services to eligible clients through the Texas Department of Human Services' Client Managed Personal Attendant Services Program.

*§44.2. What do certain words and terms in this chapter mean?*

The following words and terms have the following meanings when used in this chapter, unless the context clearly indicates otherwise.

(1) §1915(c) Medicaid waiver--Section of the Social Security Act that allows states to waive various Medicaid requirements. This section establishes alternative, community-based services for individuals who qualify to receive services in an institution.

(2) Agency model--One of three Client Managed Personal Attendant Services (CMPAS) Program payment models a client may choose. When a client chooses the agency model, the provider agency is the employer of record of the attendant and substitute attendant. The other two CMPAS Program payment models are the block grant model and the consumer directed services model.

(3) Applicant--A person who requests services under the CMPAS Program.

(4) Assessor of need--The provider agency employee responsible for determining an applicant's or client's need for client managed personal attendant services.

(5) Attendant--An employee who provides direct care to clients.

(6) Block grant model--One of three CMPAS Program payment models a client may choose. When a client chooses the block grant model, the client is the attendant's employer of record and the provider agency is the employer of record for the substitute attendant. The other two CMPAS Program payment models are the agency model and the consumer directed services model.

(7) Client--A person who is eligible to receive services under this chapter.

(8) Client Managed Personal Attendant Services (CMPAS) Program--The Texas Department of Human Services (DHS) program for personal attendant services in which clients manage their attendant services to varying degrees.

(9) Consumer directed services (CDS) model--One of three CMPAS Program payment models a client may choose. When a client chooses the CDS model, the client is the employer of record of the attendant and the substitute attendant. The other two CMPAS Program payment models are the agency model and the block grant model.

(10) Contract--The formal written agreement between DHS and a provider agency to provide services to DHS clients eligible under this chapter in exchange for reimbursement.

(11) Contract manager--A DHS employee who is responsible for the overall management of the contract with the provider agency.

(12) Days--Any reference to days means calendar days, unless otherwise specified in the text. Calendar days include weekends and holidays.

(13) Delegated health-related tasks--Service tasks ordered by a physician that the attendant may perform for the client only under a physician's or registered nurse's delegation.

(14) DHS--The Texas Department of Human Services.

(15) Interdisciplinary team (IDT)--A designated group of individuals that meets to discuss service delivery issues. An IDT includes:

(A) the client or the client's representative, or both;

(B) a provider agency representative;

(C) the regional nurse or contract manager or both; and

(D) other persons as necessary.

(16) Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma, or New Mexico; a physician assistant currently licensed in Texas; or a registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse.

(17) Practitioner's statement--A document such as the DHS Practitioner's Statement of Medical Need form that includes:

(A) a statement signed by a practitioner that the client has a current medical need for assistance with personal care tasks and other activities of daily living;

(B) certification that the provider agency verified with the U.S. Centers for Medicare and Medicaid Services that the practitioner is not excluded from participation in Medicare or Medicaid; and

(C) a statement that the disability is permanent or is expected to last at least six months.

(18) Provider agency--A home and community support services agency that contracts with DHS to provide services under the CMPAS Program.

(19) Representative--The client's spouse, other responsible party, or legal representative.

(20) Service plan--A document that lists the service tasks and states the units of services agreed to between the client and assessor of need.

(21) Service schedule--A schedule for delivering attendant services that is agreed upon and signed by the client or the client's representative.

(22) Service slot--An available position for an applicant to receive services under the CMPAS Program. The number of service slots is based on the amount of funds appropriated by the Texas Legislature for the CMPAS Program.

(23) Substitute attendant--The person who, on a temporary basis and in place of the attendant, provides services to the client.

(24) Unit of service--One hour of service delivered to a client under the CMPAS Program.

(25) Working days--Days DHS is open for business.

(26) Written--Information recorded on paper or other legible document. Written information may be sent by mail or fax, or hand delivered.

*§44.3. How does a potential provider agency qualify to participate in the CMPAS Program?*

To qualify to participate in the CMPAS Program, a potential provider agency must:

(1) maintain a license from DHS under Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies), under the personal assistance services category of licensure, in the counties to be served;

(2) meet the requirements described in Chapter 49 of this title (relating to Contracting for Community Care Services);

(3) enter into a contract with DHS to provide CMPAS Program services; and

(4) meet the requirements described in this chapter.

*§44.4. What are the three CMPAS Program payment models and how do they differ?*

Clients of the CMPAS Program have a choice of one of the following three payment models:

(1) Agency model--In the agency model:

(A) the client retains control over certain personnel decisions, such as selecting, supervising, and dismissing the attendant who provides services to the client;

(B) the provider agency is responsible for:

*(i)* recruitment of attendants and substitute attendants (a responsibility the client may share);

*(ii)* payroll for attendants and substitute attendants; and

*(iii)* filing tax-related reports of attendants and substitute attendants;

(C) the provider agency is the employer of record of attendants and substitute attendants; and

(D) the provider agency is responsible for providing substitute attendants.

(2) Block grant model--Clients receiving assistance through Medicaid or another program in which eligibility is based in whole or in part on income may not choose this model. In the block grant model:

(A) the client recruits, hires, manages, and dismisses attendants;

(B) the client is responsible for:

*(i)* payroll for attendants; and

*(ii)* filing tax-related reports of attendants;

(C) the client is the employer of record of attendants;

(D) the provider agency is the employer of record of substitute attendants;

(E) the provider agency is responsible for:

*(i)* providing substitute attendants;

*(ii)* payroll for substitute attendants; and

*(iii)* filing tax-related reports for substitute attendants; and

(F) the provider agency is responsible for reimbursing the client for attendant wages and employment taxes paid by the client; and

(G) the provider agency is not required to be licensed under Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) when performing the functions described in subparagraph (F) of this paragraph.

(3) Consumer directed services (CDS) model--In the CDS model:

(A) the client recruits, hires, manages, and dismisses attendants;

(B) the client is the employer of record of his or her attendant and substitute attendant;

(C) the client is responsible for providing substitute attendants; and

(D) the provider agency is responsible for:

*(i)* payroll for attendants and substitute attendants; and

*(ii)* filing tax-related reports of attendants and substitute attendants; and

(E) the provider agency is not required to be licensed under Chapter 97 of this title when performing the functions described in subparagraph (D) of this paragraph.

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 October 17, 2003.

TRD-200306874
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 438-3734

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## SUBCHAPTER B. RESPONSIBILITIES OF ALL PROVIDER AGENCIES

## DIVISION 1. PROVIDER AGENCY RESPONSIBILITIES

**40 TAC §44.11**

The new section is proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new section implements the Human Resources Code, §§22.0001 - 22.038.

*§44.11. What are the responsibilities under this chapter of all provider agencies in the CMPAS Program?*

All provider agencies must comply with all of the requirements of:

(1) Divisions 3 - 7 of this subchapter (relating to Eligibility, Referral, and Assessment; Service Initiation; Reassessment; Co-payment Determination; and Tasks); and

(2) Subchapters E and F of this chapter (relating to Service Suspension, Termination, and Dispute Resolution; and Record Keeping and Reimbursement).

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 October 17, 2003.

TRD-200306881
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 438-3734

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## DIVISION 2. ATTENDANT REQUIREMENTS

**40 TAC §44.21**

The new section is proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new section implements the Human Resources Code, §§22.0001 - 22.038.

*§44.21. What are the requirements for a person to be an attendant in the CMPAS Program?*

For a person to be an attendant in the CMPAS Program, the person must:

(1) be age 18 or older;

(2) be able to work part or all of the hours needed by the client;

(3) agree to be interviewed by the client;

(4) have reliable transportation to the client's home within the service schedule; and

(5) demonstrate to the satisfaction of the client that the person is capable of performing the tasks included in the client's service plan, as described in §44.71 of this chapter (relating to What tasks may an attendant perform for a client under the CMPAS Program, and where may the attendant perform the tasks?).

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, REFERRAL, AND ASSESSMENT

**40 TAC §§44.31 - 44.33**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001 - 22.038.

*§44.31. When is an applicant considered eligible to receive services under the CMPAS Program?*

To be eligible to receive services under the CMPAS Program, a service slot must be available for the applicant, and the applicant must:

(1) be age 18 or older;

(2) obtain a practitioner's statement;

(3) be assessed under §44.33 of this division (relating to How does the provider agency determine an applicant's eligibility, co-payment, and service needs?) as needing assistance with at least one personal care task for at least five hours per week;

(4) be able and willing to:

(A) self-direct the attendant care; or

(B) designate a relative or friend to direct the care who is able and willing to do so without compensation;

(5) reside in an area in which CMPAS Program services are available;

(6) have a service plan that was developed under §44.33 of this division that does not exceed 52 hours per week of CMPAS Program services;

(7) choose one of the three payment models under this chapter;

(8) not be receiving Community Care for the Aged and Disabled services that, when added to the cost of the CMPAS Program services, would exceed the weighted average cost for nursing home care;

(9) not be receiving services under any of the following DHS programs:

(A) Primary Home Care;

(B) Residential Care; or

(C) Adult Foster Care;

(10) not be receiving services under a §1915(c) Medicaid waiver program;

(11) not be receiving regular or ongoing attendant services under either of the following DHS programs:

(A) Special Services to Persons with Disabilities; or

(B) In-Home and Family Support; and

(12) not choose the block grant payment model if the applicant is receiving assistance through Medicaid or another program in which eligibility is based in whole or in part on the applicant's income.

*§44.32. How does a person express interest in and be referred for services under the CMPAS Program?*

(a) A person who is interested in receiving services under the CMPAS Program may:

(1) directly contact a provider agency; or

(2) contact the DHS regional office.

(b) When a person directly contacts a provider agency, the provider agency, by the next working day, must forward to the DHS regional office the person's:

(1) name;

(2) address;

(3) birth date;

(4) phone number(s) (if available);

(5) social security number (if available);

(6) current living arrangements;

(7) DHS client number (if applicable);

(8) status regarding receipt of Supplemental Security Income (SSI); and

(9) date and time of referral.

(c) The DHS regional office determines whether any service slots are available for a person who is interested in receiving services under the CMPAS Program. If a service slot is available for an interested person, DHS refers the person to a provider agency to apply for services. When no service slots are available for the person, DHS staff place the person on an interest list by entering information about the person in the DHS Community Services Interest List (CSIL) system.

(d) When service slots become available on an interest list, DHS staff:

(1) release names from the interest list on a first-come, first-served basis;

(2) refer the next person on the interest list to a provider agency to apply for services under the CMPAS Program; and

(3) inform the provider agency of any other DHS program services the person is receiving, the cost of those services, and the approved service period for those services.

(e) When more than one provider agency is in the region, DHS gives applicants for whom a service slot is available information about each provider agency. The applicant may contact the provider agencies for additional information, and the applicant chooses the provider agency that best meets his or her needs.

(f) The provider agency must provide CMPAS Program services to all clients DHS refers to the provider agency unless the assessor of need, in good faith, determines:

(1) the provider agency and other sources of support are unable to meet the client's needs without risking the client's health and safety;

(2) the environment in the client's home is a serious threat to the health and safety of the attendant;

(3) the client, or someone in the client's home, seriously threatens the health and safety of the attendant;

(4) the provider agency or client, as appropriate, is unable to recruit an attendant; or

(5) the provider agency's contract does not require the provider agency to provide services under the payment model chosen by the client.

(g) When a client chooses a payment model not in the provider agency's contract, the provider agency must refer the client to a provider agency that offers the client's payment model of choice.

(h) The provider agency must conduct an interdisciplinary team (IDT) meeting in accordance with the requirements of §44.105 of this chapter (relating to Why does an interdisciplinary team (IDT) meet?) whenever it determines it cannot provide CMPAS Program services to a client for any of the reasons described in subsection (f)(1) - (4) of this section.

*§44.33. How does the provider agency determine an applicant's eligibility, co-payment, and service needs?*

(a) The assessor of need must conduct an initial on-site assessment of an applicant by the 14th day after the referral date from the DHS regional office and must:

(1) determine CMPAS Program eligibility. The applicant must meet all criteria in §44.31 of this chapter (relating to When is an applicant considered eligible to receive services under the CMPAS Program?);

(2) enable the applicant to make an informed choice of whether to participate in the CMPAS Program by discussing with the applicant all applicable publicly funded programs that offer attendant services. The provider agency may contact the DHS regional office for information about public programs that offer attendant services;

(3) assess the applicant's service needs by using the DHS Client Needs Assessment Questionnaire and Task/Hour Guide form;

(4) for each eligible applicant:

(A) develop a service plan based on the results of the assessment questionnaire that:

*(i)* includes the number of hours and tasks negotiated between the applicant and the assessor of need; and

*(ii)* is signed by the applicant; and

(B) determine the applicant's co-payment under §44.61 of this chapter (relating to How is a client's co-payment determined and what are the procedures for collecting the co-payment?) and explain to the applicant the importance of making the co-payments as a condition of retaining eligibility; and

(5) explain to the applicant the three payment models described in §44.4 of this chapter (relating to What are the three CMPAS Program payment models and how do they differ?) and have the applicant choose a payment model.

(b) If the client service plan includes delegated health-related tasks, the provider agency:

(1) verifies that the health-related tasks are properly delegated before an attendant performs any such tasks for the client; and

(2) maintains in the agency's client file records that:

(A) identify and are signed and dated by the delegating physician or registered nurse;

(B) include the name of the client, the names of the attendants delegated to perform the health-related tasks for the client, and a description of the specific health-related tasks to be performed; and

(C) are in accordance with the Texas Medical Practices Act and any other applicable state or federal law.

(c) The provider agency notifies each applicant who is not eligible for services in writing using the DHS Notification of Community Care Services form within three days of the date of the decision. This form notifies the applicant of the applicant's right to appeal and explains how to file the appeal.

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 4. SERVICE INITIATION

**40 TAC §§44.41 - 44.43**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001 - 22.038.

*§44.41. What training must the provider agency perform before beginning client managed personal attendant services to a client under the CMPAS Program?*

Before beginning services for a client under the CMPAS Program, the provider agency must train the client in:

(1) client rights and responsibilities under DHS's Community Care for the Aged and Disabled programs;

(2) skills for selecting, instructing, and supervising attendants;

(3) procedures for preparing attendant time sheets; and

(4) procedures for the CMPAS Program payment model he or she chooses.

*§44.42. When must the provider agency begin the client managed personal attendant services?*

The provider agency must:

(1) begin providing services to a client no later than the 14th day after DHS refers him or her to the provider agency; or

(2) begin providing services immediately when:

(A) the provider agency has received a practitioner's statement or oral information from a practitioner indicating that the applicant is disabled and in need of services under the CMPAS Program;

(B) the applicant otherwise qualifies as a client by meeting all other eligibility criteria described in §44.31 of this chapter (relating to When is an applicant considered eligible to receive services under the CMPAS Program?);

(C) the applicant has an immediate need for services under the CMPAS Program, which, if unmet, would result in institutionalization of the applicant; or

(D) the applicant has selected an attendant who can immediately begin providing the services or the provider agency can designate a substitute attendant to immediately begin providing the services pending the applicant's choice of attendant.

*§44.43. When must the provider agency discontinue services to a client?*

The provider agency must discontinue services and follow the procedures in §44.103 of this chapter (relating to What procedures must a provider agency follow to suspend and resume services?) if:

(1) services were initiated under §44.42(2)(A) of this division (relating to When must the provider agency begin the client managed personal attendant services); and

(2) the client fails to submit a practitioner's written statement within 30 days of the date services were initiated.

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## DIVISION 5. REASSESSMENT

**40 TAC §44.51, §44.52**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001 - 22.038.

*§44.51. After a provider agency performs an initial assessment of a client under §44.33 of this chapter, how often must the provider agency reassess the client?*

A provider agency must reassess a client annually and whenever there is a change in the client's status, as follows:

(1) Annual reassessments. A provider agency must annually reassess a client using all factors in §44.33 of this chapter (relating to How does the provider agency determine an applicant's eligibility, co-payment, and service needs?). The provider agency must complete each annual reassessment no later than the anniversary of the date the client began receiving services.

(2) Reassessment upon change in client status. When a provider agency learns that a client's status may have changed in a way that may affect the client's eligibility for or receipt of services, the provider agency must reassess the client. In doing so, the provider agency may consider only those factors in §44.33 of this chapter that have changed since the prior assessment. A change in client status that requires reassessment may include a change in:

(A) income, deductions, or exclusions; or

(B) the client's need for attendant care services, the service plan, or the units of service.

*§44.52. How and when must a provider agency implement changes to a client's service plan that are prompted by a reassessment of the client?*

A provider agency must:

(1) implement any change in a client's service plan within seven days of the reassessment;

(2) implement any change in a client's co-payment to be effective on the first day of the month following the reassessment;

(3) notify the contract manager in writing of any change to a client's service plan within seven days of the completion of the reassessment. The notification may be made by fax and must be on a single document that contains:

(A) date the document is completed;

(B) contract number;

(C) effective date of the service plan change;

(D) name of the client;

(E) service tasks assigned to the client's attendant;

(F) name of the assessor of need;

(G) service schedule;

(H) signature of the assessor of need; and

(I) date the document is signed; and

(4) document all service plan changes:

(A) in the client file; and

(B) according to the terms of the contract.

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## DIVISION 6. CO-PAYMENT DETERMINATION

**40 TAC §§44.61 - 44.65**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001 - 22.038.

*§44.61. How is a client's co-payment determined and what are the procedures for collecting the co-payment?*

(a) A client's co-payment is a percentage of the monthly cost for services provided to the client. To arrive at a client's co-payment, a provider agency must:

(1) determine the client's total monthly income in accordance with §44.62 of this division (relating to For purposes of calculating a client's co-payment, how must a provider agency determine a client's total monthly income?);

(2) determine the client's net monthly income in accordance with §44.65 of this division (relating to For purposes of calculating a client's co-payment, how must a provider agency determine a client's net monthly income?);

(3) determine the client's percentage amount by finding the percentage amount in the right column of the following table that corresponds to the client's net monthly income;
Figure: 40 TAC §44.61(a)(3)

(4) determine the monthly cost for services by multiplying the number of units of service in the client's monthly service plan by the reimbursement rate contained in the contract; and

(5) arrive at the amount of the client's monthly co-payment by multiplying the client's percentage amount by the monthly cost for services.

(b) A client who suffers undue hardship as a result of financial obligations for reasons such as a catastrophic illness of the client or a family member may request that his or her co-payment be reduced or waived. The provider agency must reduce or waive the amount of the client's co-payment if the contract manager approves his or her request. To request a reduction or waiver of a co-payment:

(1) the client must make the request of the assessor of need;

(2) the assessor of need must submit the request to the contract manager and recommend approval or non-approval; and

(3) the contract manager must advise the assessor of need of whether the client's request is approved.

(c) The provider agency must collect each co-payment from the client on or before the end of the month. If payment is not made by the end of the month, the provider agency must send notice to the client by the first working day of the following month. The provider

agency may not charge a client a fee for late payment. The provider agency may suspend services to the client under §44.103 of this chapter (relating to What procedures must a provider agency follow to suspend and resume services?) for failure to pay a co-payment if the client has not paid the co-payment by the 20th day of the following month.

(d) In collecting monthly co-payments, a provider agency must:

(1) provide the client a receipt containing the client's name, the amount paid, and the date of the payment, and retain a copy of the receipt;

(2) deduct the co-payment from reimbursement claims submitted to DHS under §44.112 of this chapter (relating to How are provider agencies reimbursed?); and

(3) maintain a current client co-payment ledger system, in accordance with generally accepted accounting principles, that reflects all charges to and all payments by the client.

*§44.62. For purposes of calculating a client's co-payment, how must a provider agency determine a client's total monthly income?*

A provider agency must determine a client's total monthly income for purposes of calculating a client's co-payment by adding together all of the following:

(1) the gross monthly earnings of the client and the client's spouse, including:

(A) employee wages or salary; and

(B) commissions, tips, piece-rate payments, and cash bonuses;

(2) the net monthly receipts of the client and the client's spouse from non-farm self-employment, calculated by totaling gross receipts then subtracting business expenses.

(A) Gross receipts means the value of all goods sold and services provided by the non-farm self-employment enterprise.

(B) Business expenses means the actual operating expenses of the non-farm self-employment enterprise, including:

*(i)* purchased goods or services;

*(ii)* rent;

*(iii)* utilities;

*(iv)* depreciation charges;

*(v)* wages and salaries; and

*(vi)* business taxes (business taxes do not include personal income taxes);

(3) the net monthly receipts of the client and the client's spouse from farm self-employment, calculated by totaling gross receipts then subtracting business expenses.

(A) Gross receipts means the value of all goods sold and services provided by the farm self-employment enterprise, except for goods and services used for family living. Gross receipts include receipts from:

*(i)* the sale of crops;

*(ii)* the rental of farm equipment;

*(iii)* the sale of wood, sand, gravel, and similar items; and

*(iv)* government crop loans.

(B) Business expenses means the actual operating expenses of the farm self-employment enterprise, including:

*(i)* the cost of feed, fertilizer, seed, and other farming supplies;

*(ii)* wages and salaries;

*(iii)* depreciation charges;

*(iv)* rent;

*(v)* interest on farm mortgages;

*(vi)* farm building repairs; and

*(vii)* farm taxes (farm taxes do not include personal income taxes);

(4) the gross monthly benefits received by the client and the client's spouse, including:

(A) pensions, retirement, disability, and survivors' benefits;

(B) education loans, scholarships, and grants (to the extent funds are or may be applied to living costs);

(C) payments from annuities, insurance, and irrevocable trust funds;

(D) public assistance payments, such as Temporary Assistance to Needy Families or Supplemental Security Income, and including general assistance from a local government source;

(E) court-ordered support payments, such as alimony and child support payments for a minor child;

(F) unemployment compensation and union strike payments;

(G) workers' compensation payments or other compensation for work injuries;

(H) Veterans Administration payments, such as subsistence allowances and refunds of GI insurance premiums; and

(I) other monthly support, such as allotments or payments from friends or relatives; and

(5) the net monthly income from property of the client and the client's spouse, calculated by averaging receipts over a 12-month period, and including:

(A) dividends and interest payments;

(B) receipts from a life estate, other estate, or trust fund;

(C) income from a mortgage, promissory note, or other negotiable instrument;

(D) income from lease of mineral rights, calculated by subtracting the following prorated payments from gross royalties or lease payments:

*(i)* property taxes (not including windfall profit taxes); and

*(ii)* excise taxes; and

(E) income from rental property, including rent from boarders, calculated by subtracting the following prorated payments from gross receipts:

*(i)* mortgage interest;

*(ii)* property repair and maintenance expenses (not including improvements or depreciation charges);

*(iii)* property insurance; and

*(iv)* property taxes.

*§44.63. For purposes of calculating a client's co-payment, what must a provider agency exclude from a client's total monthly income?*

A provider agency must exclude the following from a client's total monthly income in calculating a client's co-payment:

(1) payments to satisfy a judgment of the Indian Claims Commission or its successor agency, the U.S. Court of Claims;

(2) any payment received under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) education loan, grant, and scholarship funds that are not or cannot be applied to living costs;

(4) Veterans Administration payments, such as aid-and-attendance benefits, homebound elderly benefits, and payments for purchase of medications;

(5) in-kind credits, such as rent subsidies;

(6) infrequent or irregular payments from any source that occur no more often than once a quarter and that do not exceed $20 a month;

(7) reimbursements from an insurance company for health insurance claims; and

(8) grants, such as those made through the DHS In-Home and Family Support Program.

*§44.64. For purposes of calculating a client's co-payment, what must a provider agency deduct from a client's total monthly income?*

A provider agency must deduct the following from a client's total monthly income in calculating a client's co-payment:

(1) the prorated monthly cost of tuition and books;

(2) $93 for the client's spouse;

(3) $93 for each dependent of the client;

(4) $93 for the client;

(5) funds the law requires be withheld, such as deductions for income taxes or to comply with the Federal Insurance Contributions Act (FICA);

(6) amounts actually spent or dedicated to be spent on disability-related equipment that costs more than $500, such as wheelchair-compatible vans, vehicle modifications, and power wheelchairs;

(7) actual child-care costs, up to $350 per month for each child through age 5, and up to $200 per month for each child age 6 - 12; and

(8) actual monthly expenditures for health insurance premiums, and for medical treatment and prescriptions that are not reimbursed by insurance.

*§44.65. For purposes of calculating a client's co-payment, how must a provider agency determine a client's net monthly income?*

To determine a client's net monthly income for co-payment purposes, a provider agency must:

(1) determine the client's total monthly income in accordance with §44.62 of this division (relating to For purposes of calculating a client's co-payment, how must a provider agency determine a client's total monthly income?);

(2) subtract from that amount any applicable income exclusions in §44.63 of this division (relating to For purposes of calculating a client's co-payment, what must a provider agency exclude from a client's total monthly income?); and

(3) subtract from that amount any applicable income deductions in §44.64 of this division (relating to For purposes of calculating a client's co-payment, what must a provider agency deduct from a client's total monthly income?).

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 7. TASKS

**40 TAC §44.71, §44.72**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001 - 22.038.

*§44.71. What tasks may an attendant perform for a client under the CMPAS Program, and where may the attendant perform the tasks?*

(a) Allowable tasks. An attendant may perform any one or more of the following tasks for a client under the CMPAS Program:

(1) personal care tasks that relate to the client's physical health, such as the following:

(A) bathing the client, including:

*(i)* drawing water in sink, basin, or tub;

*(ii)* hauling or heating water;

*(iii)* laying out supplies;

*(iv)* assisting in or out of tub or shower;

*(v)* sponge bathing and drying;

*(vi)* bed bathing and drying;

*(vii)* tub bathing and drying; and

*(viii)* providing standby assistance for safety;

(B) dressing the client, including:

*(i)* dressing client;

*(ii)* undressing client; and

*(iii)* laying out clothes;

(C) preparing the client's meals, including:

*(i)* cooking a full meal;

*(ii)* warming up prepared food;

*(iii)* planning meals;

*(iv)* helping prepare meals; and

*(v)* cutting client's food for eating;

(D) assisting the client with eating, including:

*(i)* assisting with eating and drinking utensils and adaptive devices. This does not include tube feeding; and

*(ii)* providing standby assistance or encouragement;

(E) assisting the client with exercising, including walking;

(F) assisting the client with grooming, including:

*(i)* shaving;

*(ii)* brushing teeth;

*(iii)* shaving underarms and legs, when requested;

*(iv)* caring for nails; and

*(v)* laying out supplies;

(G) caring for the client's routine hair and skin needs, including:

*(i)* washing hair;

*(ii)* drying hair;

*(iii)* assisting with setting, rolling, or braiding hair. This does not include styling, cutting, or chemical processing of hair;

*(iv)* combing or brushing hair;

*(v)* applying nonprescription lotion to skin;

*(vi)* washing hands and face;

*(vii)* applying makeup; and

*(viii)* laying out supplies;

(H) assisting the client with medications that normally are self-administered;

(I) assisting the client with toileting, including:

*(i)* changing diapers;

*(ii)* changing colostomy bag or emptying catheter bag;

*(iii)* assisting on or off bedpan;

*(iv)* assisting with the use of a urinal;

*(v)* assisting with feminine hygiene needs;

*(vi)* assisting with clothing during toileting;

*(vii)* assisting with toilet hygiene, including the use of toilet paper and washing hands;

*(viii)* changing external catheter;

*(ix)* preparing toileting supplies and equipment. This does not include preparing catheter equipment; and

*(x)* providing standby assistance; and

(J) assisting the client with transferring and ambulating, including:

*(i)* non-ambulatory movement from one stationary position to another (transfer), which does not include carrying;

*(ii)* adjusting or changing the client's position in a bed or chair (positioning);

*(iii)* assisting in rising from a sitting to a standing position;

*(iv)* assisting in positioning for use of a walking apparatus;

*(v)* assisting with putting on and removing leg braces and prostheses for ambulation;

*(vi)* assisting with ambulation or using steps;

*(vii)* assisting with wheelchair ambulation; and

*(viii)* providing standby assistance;

(2) home management tasks that support the client's health and safety, such as the following:

(A) changing the client's bed linens and making the bed;

(B) housecleaning for the client, including:

*(i)* cleaning up after the client's personal care tasks;

*(ii)* emptying and cleaning the client's bedside commode;

*(iii)* cleaning the client's bathroom;

*(iv)* cleaning floor of living areas used by client;

*(v)* dusting areas used by client;

*(vi)* carrying out trash, setting out garbage for pick up;

*(vii)* cleaning stovetop and counters; and

*(viii)* cleaning refrigerator and stove;

(C) laundering the client's clothes, including:

*(i)* doing hand wash;

*(ii)* gathering and sorting;

*(iii)* loading and unloading machines in residence;

*(iv)* using Laundromat machines;

*(v)* hanging clothes to dry; and

*(vi)* folding and putting away clothes;

(D) shopping for the client, including:

*(i)* preparing a shopping list;

*(ii)* going to the store and purchasing or picking up items; and

*(iii)* picking up medication;

(E) storing the client's purchased items; and

(F) washing the client's dishes;

(3) client escorting tasks, including:

(A) accompanying the client outside the home to support the client in living in the community;

(B) arranging for transportation, but not providing transportation. The provider agency must have a policy addressing direct client transportation; however, direct client transportation is not a task DHS will reimburse under §44.112 of this chapter (relating to How are provider agencies reimbursed?);

(C) accompanying client to clinic, doctor's office, or other trips made for the purpose of obtaining medical diagnosis or treatment; and

(D) waiting in the doctor's office or clinic with a client when necessary due to client's condition or distance from home; and

(4) delegated health-related tasks. Health-related tasks:

(A) require a physician's order;

(B) must be delegated by a physician or registered nurse in accordance with their respective practice acts;

(C) must be delegated specifically to the client, and identify the attendant and tasks;

(D) must be supervised by the delegating authority; and

(E) include the following:

*(i)* internal catheter care, including insertion, irrigation, and changing;

*(ii)* administration of medications;

*(iii)* bowel program, including cleansing enema, and internal digital stimulation;

*(iv)* decubitus care, stage II; and

*(v)* changing sterile dressings.

(b) Location of tasks. An attendant may perform any allowable task for a client in the client's home or in any other appropriate location, such as while accompanying the client to a shopping mall, to a movie, or to a community event.

*§44.72. What tasks must an attendant not perform for a client under the CMPAS Program?*

An attendant must not perform any task for a client if:

(1) performing the task would require additional licensure beyond the license held by the provider agency under §44.3 of this chapter (relating to How does a potential provider agency qualify to participate in the CMPAS Program?), such as nursing services that have not been properly delegated to the attendant;

(2) the task is not among those listed in §44.71(a) of this division (relating to What tasks may an attendant perform for a client under the CMPAS Program, and where may the attendant perform the tasks?); or

(3) the task is not contained in the client's service plan.

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## SUBCHAPTER C. PROVIDER AGENCY RESPONSIBILITIES IN PAYMENT MODELS

**40 TAC §§44.81 - 44.83**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001 - 22.038.

*§44.81. What are the responsibilities under this chapter of the provider agency when a client chooses the agency payment model?*

A provider agency in the agency model must comply with §44.11 of this chapter (relating to What are the responsibilities under this chapter of all provider agencies in the CMPAS Program?) and must:

(1) maintain and supervise a pool of substitute attendants to provide backup attendant services upon the client's request;

(2) hire an attendant who meets the qualifications of §44.21 of this chapter (relating to What are the requirements for a person to be an attendant in the CMPAS Program?) and whom the client agrees to supervise. Prospective attendants are referred to the client until a satisfactory match is achieved. If a client has not agreed to supervise a prospective attendant within seven days from the date the assessor of need determined the client to be eligible for services, the assessor of need must confer with the client. The parties must identify the reasons for failure to achieve a satisfactory match. The provider agency must provide training when necessary to enable the client to choose an attendant whom the client agrees to supervise;

(3) provide each attendant an initial orientation training before the attendant provides services to a client. The initial orientation training must include the following topics:

(A) basic interpersonal skills;

(B) needs of persons with disabilities;

(C) first aid;

(D) safety and emergency procedures;

(E) proper completion of required forms;

(F) explanation of the client's role as supervisor;

(G) explanation of the provider agency's responsibilities to attendants;

(H) attendant rights and responsibilities;

(I) specific information needed to provide tasks to the client;

(J) reporting changes in the client's condition to the provider agency; and

(K) instructions to provide only authorized tasks and hours, unless the client privately pays for additional hours;

(4) assume all responsibility for paying and filing attendant income and unemployment taxes and associated paperwork;

(5) assume liability for attendant work-related injuries to the same extent as any employer;

(6) prepare payroll and distribute payroll checks to attendants;

(7) complete the criminal history check required by the Health and Safety Code, Chapter 250, on an attendant before the attendant performs any direct care for a client;

(8) actively intervene to resolve problems between a client and the client's attendant when they cannot resolve problems on their own;

(9) determine the salary and benefit package of attendants;

(10) not discriminate against attendants or applicants in violation of applicable law;

(11) accept responsibility for acts of attendants on the job to the same extent as any employer; and

(12) conduct in-home visits in addition to those specified in §44.33 of this chapter (relating to How does the provider agency determine an applicant's eligibility, co-payment, and service needs?) and §44.51 of this chapter (relating to After a provider agency performs an initial assessment of a client under §44.33 of this chapter, how often must the provider agency reassess the client?). The assessor of need determines the frequency of in-home visits based on the specific needs of the client or attendant, but at least annually, to assess and document:

(A) that the client's service plan is adequate;

(B) that the client continues to need the services;

(C) whether the client needs a service plan change;

(D) that the attendant remains competent to perform the allowable tasks; and

(E) that the attendant is performing the allowable tasks.

*§44.82. What are the responsibilities under this chapter of the provider agency when a client chooses the block grant model?*

A provider agency in the block grant model must comply with the responsibilities listed in §44.11 of this chapter (relating to What are the responsibilities under this chapter of all provider agencies in the CMPAS Program?) and must:

(1) reimburse the client for attendant and substitute attendant wages and employment taxes paid by the client;

(2) negotiate with the client and agree on an amount that the provider agency will retain from reimbursements made under §44.112 of this chapter (relating to How are provider agencies reimbursed?) to compensate the provider agency for its services to the client. The agreed amount must be based on the provider agency's actual cost of providing services to the client. This may include:

(A) cost of providing substitute attendants;

(B) cost of providing administrative services;

(C) history of the client's use of substitute attendants; and

(D) need for provider agency intervention;

(3) maintain and supervise a pool of substitute attendants to provide backup attendant services upon the client's request. The provider agency must provide each substitute attendant an initial orientation training before the attendant provides services to a client. The initial orientation training must include the following topics:

(A) basic interpersonal skills;

(B) needs of persons with disabilities;

(C) first aid;

(D) safety and emergency procedures;

(E) proper completion of required forms;

(F) explanation of the client's role as supervisor;

(G) explanation of the provider agency's responsibilities to attendants;

(H) attendant rights and responsibilities;

(I) specific information needed to provide tasks to the client;

(J) reporting changes in the client's condition to the provider agency; and

(K) instructions to provide only authorized tasks and hours, unless the client privately pays for additional hours; and

(4) for any client the provider agency learns is failing to fully perform any duty the client is required to perform as the attendant's employer of record:

(A) counsel the client regarding the consequences of noncompliance; and

(B) in the absence of compliance by the client, offer the client the choice of another CMPAS Program payment model.

*§44.83. What are the responsibilities under this chapter of a provider agency when a client chooses the consumer directed services (CDS) model?*

(a) If the provider agency does not offer the CDS model, the provider agency must:

(1) comply with the responsibilities listed in §44.11 of this chapter (relating to What are the responsibilities under this chapter of all provider agencies in the CMPAS Program?);

(2) provide the client a list of provider agencies that offer the CDS model; and

(3) refer the client to the provider agency chosen by the client.

(b) If the provider agency offers the CDS model, the provider agency must comply with the responsibilities listed in §44.11 of this chapter and in §41.103 of this title (relating to Generic Contractor Responsibilities under the Vendor Fiscal Intermediary (VFI) Model).

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. CLIENT RESPONSIBILITIES IN PAYMENT MODELS

**40 TAC §§44.91 - 44.94**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001 - 22.038.

*§44.91. What are the responsibilities under this chapter of all clients who receive services under the CMPAS Program, regardless of the payment model a client chooses?*

Regardless of the payment model a client chooses, clients under the CMPAS Program must:

(1) obtain and submit a practitioner's statement to the assessor of need whenever requested;

(2) negotiate with the assessor of need at each assessment or reassessment to determine which allowable tasks in §44.71 of this chapter (relating to What tasks may an attendant perform for a client under the CMPAS Program, and where may the attendant perform the tasks?) are included in the client's service plan;

(3) select, supervise, and release from service his or her attendant;

(4) train his or her attendant in the specifics of the delivery of services;

(5) certify the attendant's recording of hours worked on or after the last day of each reporting period by:

(A) signing, dating, and submitting to the provider agency the attendant's time sheet; or

(B) if applicable, submitting appropriate certification of the attendant's hours worked through a provider agency's electronic service delivery documentation system;

(6) notify the provider agency within 10 days of any services the client is receiving under another DHS program that duplicate the services provided under the CMPAS Program. Such services include services provided under DHS's Primary Home Care Program;

(7) submit any required co-payment to the provider agency no later than the 20th working day of each month;

(8) provide proof of income to the assessor of need whenever requested;

(9) obtain and submit to the assessor of need a proper physician's order and physician's or registered nurse's documentation for any delegated health-related tasks to be included in the service plan before any such tasks are included in the service plan; and

(10) inform the provider agency and DHS within 10 days of a change in the client's:

(A) mailing or residence address;

(B) telephone number;

(C) physical condition that may affect the need for services;

(D) total monthly income as calculated under §44.62 of this chapter (relating to For purposes of calculating a client's co-payment, how must a provider agency determine a client's total monthly income?);

(E) income exclusions as calculated under §44.63 of this chapter (relating to For purposes of calculating a client's co-payment, what must a provider agency exclude from a client's total monthly income?); and

(F) monthly deductions as calculated under §44.64 of this chapter (relating to For purposes of calculating a client's co-payment, what must a provider agency deduct from a client's total monthly income?).

*§44.92. What are the responsibilities under this chapter of clients who choose the agency model?*

Clients who choose the agency model must comply with the responsibilities listed in §44.91 of this subchapter (relating to What are the responsibilities under this chapter of all clients who receive services under the CMPAS Program, regardless of the payment model a client chooses?) and must:

(1) actively assist the provider agency in recruiting attendants and substitute attendants by seeking out and referring potential attendants to the provider agency;

(2) select an attendant from among the potential attendants whom the provider agency refers to the client;

(3) not discriminate against any potential attendant, attendant, or substitute attendant in violation of applicable law; and

(4) interview any prospective attendant whom the provider agency refers to the client and inform the provider agency within seven days of the referral of whether the client agrees to the attendant.

*§44.93. What are the responsibilities under this chapter of clients who choose the block grant model?*

Clients who choose the block grant model must comply with the responsibilities listed in §44.91 of this subchapter (relating to What are the responsibilities under this chapter of all clients who receive services under the CMPAS Program, regardless of the payment model a client chooses?) and must:

(1) resolve any employment-related problems or disagreements directly with his or her attendant(s);

(2) not discriminate against attendants or applicants in violation of applicable law;

(3) assume liability for work-related attendant injuries and responsibility for work-related attendant conduct to the same extent as any employer. Because the attendant is not an employee of the provider agency or DHS, the provider agency and DHS are not responsible for the attendant's work-related conduct;

(4) spend all funds received from the provider agency that were reimbursed under §44.112 of this chapter (relating to How are provider agencies reimbursed?) only on attendant wages, employment-related tax payments, and employee benefits;

(5) prepare and sign an agreement with the attendant that includes:

(A) the tasks the attendant is to perform for the client;

(B) the schedule the attendant will work for the client;

(C) the hourly rate, at or above the minimum required by law, the client will pay the attendant;

(D) when the client will pay the attendant (at least twice a month);

(E) reasons the client may terminate the attendant's employment; and

(F) a requirement that the attendant provide the client at least 24 hours advance notice of not being able to work a scheduled shift;

(6) supervise the attendant's recording of hours worked. This includes signing, dating, and submitting the attendant's time sheet to the provider agency on or after the last day of the reporting period services were provided; and

(7) submit to the provider agency, in a timely manner, any employment-related government forms the provider agency files on behalf of the client. The client must submit Form 941 of the U.S. Internal

Revenue Service and Form C3 of the Texas Workforce Commission to the provider agency no later than 30 days before the filing deadline.

*§44.94. What are the responsibilities under this chapter of clients who choose the consumer directed services (CDS) model?*

Clients who choose the CDS model must comply with the responsibilities listed in §44.91 of this subchapter (relating to What are the responsibilities under this chapter of all clients who receive services under the CMPAS Program, regardless of the payment model a client chooses?) and must comply with the responsibilities listed in §41.105 of this title (relating to Generic Consumer Responsibilities under the Vendor Fiscal Intermediary Model).

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. SERVICE SUSPENSION, TERMINATION, AND DISPUTE RESOLUTION

**40 TAC §§44.101 - 44.107**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001 - 22.038.

*§44.101. When must a provider agency suspend services to a client under the CMPAS Program?*

A provider agency must suspend services to a client when:

(1) the client permanently leaves the state;

(2) the client moves to a location where the provider agency does not or cannot provide CMPAS Program services to the client;

(3) the client dies;

(4) the client is admitted to an institution. An institution is defined as a:

(A) hospital;

(B) nursing facility;

(C) state school;

(D) state hospital; or

(E) intermediate care facility serving persons with mental retardation or related conditions;

(5) the client or the client's representative requests that services end;

(6) the client's representative or someone in the client's home, as applicable, refuses to:

(A) supervise the attendant;

(B) adhere to the service plan; or

(C) otherwise comply with a mandatory requirement of the CMPAS Program;

(7) the client or the client's representative, as applicable, loses the ability to:

(A) supervise the attendant;

(B) adhere to the service plan; or

(C) otherwise comply with a mandatory requirement of the CMPAS Program;

(8) the client does not pay a co-payment by the 20th day of the month after it is due, as required in §44.61 of this chapter (relating to How is a client's co-payment determined and what are the procedures for collecting the co-payment?); or

(9) does not provide a practitioner's statement as required in §44.91 of this chapter (relating to What are the responsibilities under this chapter of all clients who receive services under the CMPAS Program, regardless of the payment model a client chooses?).

*§44.102. When may a provider agency suspend services to a client under the CMPAS Program?*

The provider agency may suspend services if:

(1) the client or someone in the client's home engages in discrimination in violation of applicable law;

(2) the client or representative fails to effectively manage his or her attendant care. This includes problems with:

(A) hiring, selecting, or retaining an attendant for reasons other than workforce issues;

(B) reaching an agreement on the amount of reimbursement the provider agency will retain (in the block grant model); and

(C) completing or submitting required program documentation;

(3) the client or someone in the client's home exhibits reckless behavior that may result in imminent danger to the health or safety of the client, the attendant, or another person. If this occurs, the provider agency must make an immediate referral to:

(A) the Texas Department of Protective and Regulatory Services or other appropriate protective services agency;

(B) local law enforcement; and

(C) the contract manager; or

(4) the provider agency or client, as applicable, is unable to hire an attendant after making a good faith effort. The provider agency must document efforts to recruit attendants, including:

(A) placement of newspaper, television, and radio ads;

(B) outreach through churches and other nonprofit organizations;

(C) use of employment agencies;

(D) use of state agency employment programs; and

(E) training of clients to locate and refer to the provider agency potential attendants in their community.

*§44.103. What procedures must a provider agency follow to suspend and resume services?*

(a) Notification of service suspension. The provider agency must notify the contract manager of any suspension by the next working day.

(1) Written notice of a suspension must include:

(A) the date of service suspension;

(B) the reason(s) for the suspension;

(C) the duration of the suspension, if known; and

(D) an explanation of the provider agency's attempts to resolve the problem that caused the suspension, including the reasons why the problem was not resolved.

(2) The provider agency must initially notify the contract manager of a suspension orally or by fax.

(A) Oral notice means directly speaking with the contract manager and does not include a message left by voice mail.

(B) The provider agency must speak with a person designated by the contract manager if the contract manager is not available.

(3) When a provider agency's first notice of a suspension is oral, the provider agency must send written notice to the contract manager within seven days of the oral notice.

(b) Interdisciplinary team (IDT) meeting. The provider agency must convene an IDT meeting, as described in §44.105 of this subchapter (relating to Why does an interdisciplinary team (IDT) meet?) if services are suspended for any of the reasons described in §44.101 of this subchapter (relating to When must a provider agency suspend services to a client under the CMPAS Program?) or §44.102 of this subchapter (relating to When may a provider agency suspend services to a client under the CMPAS Program?).

(c) Resuming services.

(1) The provider agency must resume services after a suspension:

(A) upon the client's return home, if applicable; or

(B) on the date specified in writing by the contract manager; or

(C) as a result of a recommendation by the IDT; or

(D) upon the provider agency's receipt of notification from the contract manager that the provider agency must resume services pending the outcome of appeal.

(2) The provider agency must send written notice to the contract manager that services have resumed within seven days of the date services resume.

*§44.104. What are the procedures for terminating services to a client under the CMPAS Program?*

The provider agency must recommend to the contract manager whether a suspension should result in termination of services. If the provider agency recommends that services to a client be terminated, the provider agency must explain the reasons for the recommendation. Upon a recommendation of termination, the contract manager decides whether services will be terminated. The contract manager may investigate the matter and may arrange a meeting with the provider agency and client.

(1) If the contract manager approves the recommendation of termination, the contract manager:

(A) sends written notice to the client of the service termination, using the DHS Reduction, Denial, Termination, or Delay of Long Term Managed Care Services form;

(B) sends to the client notice of his or her right to a fair hearing, using the DHS Petition for Hearing form; and

(C) informs the client of his or her right to appeal the termination decision and the client's right to continue to receive services pending an appeal.

(2) If the contract manager does not approve the recommendation of termination, the contract manager:

(A) notifies the provider agency that the termination recommendation is not approved;

(B) directs the provider agency to resume services to the client; and

(C) advises the contract agency of the date that it must resume services.

*§44.105. Why does an interdisciplinary team (IDT) meet?*

(a) The provider agency must convene an IDT meeting by telephone conference call or in person within three working days of:

(1) suspending services to a client under §44.101 of this subchapter (relating to When must a provider agency suspend services to a client under the CMPAS Program?) or §44.102 of this subchapter (relating to When may a provider agency suspend services to a client under the CMPAS Program?); or

(2) identifying an issue that prevents the provider agency from carrying out a requirement of the CMPAS Program.

(b) If the provider agency is unable to convene an IDT meeting with all the members described in §44.2 of this chapter (relating to What do certain words and terms in this chapter mean?), the provider agency must convene the IDT meeting with the available members and send the documentation of the IDT meeting to the Regional Administrator for the DHS region in which the client resides.

(1) The documentation must be sent within five working days of the date of the IDT meeting.

(2) Further action may be required by the provider agency, based on a review of the IDT meeting documentation.

*§44.106. What procedures do interdisciplinary teams (IDTs) follow?*

(a) IDT evaluation and recommendation. The IDT must:

(1) evaluate the problem, ensuring that the problem is not due to discrimination in violation of applicable law;

(2) identify any possible solutions to the problem; and

(3) make recommendations to the provider agency.

(b) Meeting outcome. The provider agency must, within two days after the IDT meeting:

(1) implement the recommendations of the IDT; or

(2) request that the contract manager refer the client to another provider agency and submit to the contract manager the provider agency's records of the IDT meeting and its outcome.

*§44.107. How are service plan and co-payment disagreements resolved?*

(a) Service plan disagreements. When the number of units of service or service tasks on a service plan becomes a matter of disagreement between the provider agency and client:

(1) The provider agency must submit a copy of the proposed service plan to the contract manager with an explanation of the disagreement and must continue to provide services under any existing service plan while the matter is pending.

(2) The contract manager may contact the provider agency to discuss the matter and provide a written decision to the provider agency regarding the matter.

(3) If the provider agency disagrees with the contract manager's decision, the provider agency must notify the contract manager, who will refer the matter to the regional nurse. The regional nurse will provide a written decision to the contract manager and the provider agency.

(4) If the provider agency disagrees with the regional nurse's decision, the provider agency must notify the regional nurse, who refers the matter to DHS state office. DHS state office issues a written decision as the final decision regarding the matter. DHS state office provides a copy of the decision to the contract manager, the regional nurse, and the provider agency.

(5) If the DHS decision resolving the disagreement calls for changes in the service plan that was submitted to the contract manager to resolve the disagreement, the provider agency must submit to the contract manager a new service plan that complies with the DHS decision. The provider agency must provide services according to the final approved service plan.

(b) Co-payment disagreements. When the amount of a client's co-payment becomes a matter of disagreement between the provider agency and client, the provider agency must comply with the following procedure:

(1) The provider agency must submit to the contract manager the assessor of need's calculation of the co-payment, an explanation of the disagreement, and continue to charge the client any current co-payment while the matter is pending.

(2) The contract manager may contact the provider agency to discuss the matter and provide a written decision to the provider agency regarding the matter.

(3) If the provider agency disagrees with the contract manager's decision, the provider agency must notify the contract manager, who refers the matter to DHS state office. DHS state office issues a written decision as the final decision regarding the matter. DHS state office provides a copy of the decision to the contract manager and the provider agency.

(4) If the DHS decision resolving the disagreement calls for a change in the client's existing service plan, the provider agency must submit to the contract manager a new service plan that complies with the DHS decision. The provider agency must charge the co-payment according to the final approved service plan.

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. RECORD KEEPING AND REIMBURSEMENT

**40 TAC §44.111, §44.112**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001 - 22.038.

*§44.111. What records must a provider agency maintain?*

(a) General requirements. The provider agency must maintain records according to:

(1) this chapter;

(2) Chapter 49 of this title (relating to Contracting for Community Care Services);

(3) Chapter 69 of this title (relating to Contracted Services); and

(4) the terms of the contract.

(b) Service delivery documentation. The provider agency must maintain records of the services delivered to the client, including records relating to disagreements, suspensions, and termination of services.

(1) Each client must periodically record on a time sheet the attendant's delivery of services to the client and must submit a copy of each completed time sheet to the provider agency. Each time sheet must be a single document that contains:

(A) name of the client;

(B) client's DHS identification number;

(C) name of the attendant who provided services to the client;

(D) beginning and ending dates of the service delivery period;

(E) tasks performed for the client;

(F) service schedule;

(G) specific days and times the attendant worked;

(H) signature of the attendant and the date signed. An attendant who is unable to complete or sign the time sheet may designate another person to complete or sign the time sheet. The provider agency must document in writing:

*(i)* reason the attendant was unable to complete or sign the time sheet; and

*(ii)* name of the person whom the attendant authorized to complete or sign the time sheet for the attendant;

(I) the signature of the client or representative and the date signed. A client or representative who is unable to complete or sign the time sheet may designate another person to complete or sign the time sheet. The provider agency must document in writing:

*(i)* reason the client or representative was unable to complete or sign the time sheet; and

*(ii)* name of the person whom the client or representative authorized to complete or sign the time sheet for the client.

(2) The provider agency must document any suspension or termination of services, as well as any interdisciplinary team (IDT)

meeting held under §44.105 of this chapter (relating to Why does an interdisciplinary team (IDT) meet?). IDT meeting records must include:

(A) reason(s) for the IDT meeting;

(B) recommendations of the IDT resulting from the meeting; and

(C) provider agency's response to the IDT recommendations.

(3) The provider agency must document any service plan disagreement and must maintain records of the procedures it follows under §44.107 of this chapter (relating to How are service plan and co-payment disagreements resolved?) to resolve the disagreement.

(4) The provider agency must document each assessor of need visit performed in accordance with §44.81 of this chapter (relating to What are the responsibilities under this chapter of the provider agency when a client chooses the agency payment model?).

(c) Financial records. The provider agency must maintain financial records:

(1) to support its billings to DHS for payment under §44.112 of this subchapter (relating to How are provider agencies reimbursed?);

(2) to support each client's co-payment as calculated by the assessor of need under §44.61 of this chapter (relating to How is a client's co-payment determined and what are the procedures for collecting the co-payment?); and

(3) 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 provider agency's accounting system; and

(4) in accordance with generally accepted accounting principles (GAAP) and DHS procedures. A provider agency's financial records must include:

(A) deposit slips, bank statements, cancelled checks, and receipts;

(B) purchase orders;

(C) invoices;

(D) journals and ledgers;

(E) time sheets, payroll, and tax records;

(F) Internal Revenue Service, Department of Labor, and other government records and forms;

(G) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation);

(H) equipment inventory records;

(I) records of the provider agency's internal accounting procedures;

(J) a chart of accounts, as defined by GAAP; and

(K) records of company policies.

(d) Subcontractor records. If a provider agency uses a subcontractor, the provider agency must maintain records of the subcontractor's activities. Maintaining all records to support subcontractor claims is the responsibility of the provider agency.

(e) Failure to maintain records. If the provider agency fails to maintain records in accordance with this section or other applicable DHS requirements, DHS may initiate corrective action plans and may pursue any appropriate sanction.

*§44.112. How are provider agencies reimbursed?*

(a) General billing requirements. The provider agency must bill DHS for services provided a client in accordance with §49.9 of this title (relating to Billings and Claims Payment).

(b) Unit rate. The provider agency must bill DHS in accordance with the unit rate authorized by DHS.

(c) Documentation. The provider agency must comply with all of the record-keeping requirements of §44.111 of this subchapter (relating to What records must a provider agency maintain?) to be eligible for reimbursement from DHS.

(d) Rounding. The provider agency must bill DHS for services in quarter-hour increments. Time worked that is not an exact quarter-hour must be rounded up to a quarter-hour if it is eight minutes or more, or not billed if it is seven minutes or less.

(e) Allowable tasks. The provider agency must bill DHS only for the tasks described in §44.71 of this chapter (relating to What tasks may an attendant perform for a client under the CMPAS Program, and where may the attendant perform the tasks?) that comprise services actually delivered to a client in accordance with the client's service plan. A provider agency may not bill DHS for services provided a client, through agreement with the client or otherwise, if DHS did not authorize the services.

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 E. CLIENT-MANAGED ATTENDANT SERVICES

**40 TAC §§48.2600 - 48.2619**

*(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 Subchapter E, concerning Client-Managed Attendant Services, §§48.2600 - 48.2619, in its Community Care for Aged and Disabled chapter. The purpose of the repeals is to delete the rules concerning the Client-Managed Attendant Services Program from Chapter 48 so they can be rewritten in plain English and placed in DHS's new Chapter 44, Client Managed Personal Attendant Services.

Gordon Taylor, 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 repealing the sections.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, 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 governing the Client Managed Personal Attendant Services (CMPAS) Program will be located in their own chapter to make them easier for the public and provider agencies to access and understand. There is no adverse economic effect on small or micro businesses as a result of repealing the sections, because the proposal simply deletes program rules in Chapter 48 to make way for new rules to be proposed in Chapter 44. 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 Steve Schoen at (512) 438-2622 in DHS's Community Care for Aged and Disabled section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-238, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The repeals are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.0001 - 22.038.

*§48.2600. Purpose of This Subchapter.*

*§48.2601. Definitions.*

*§48.2602. Program Services.*

*§48.2603. Contractor Qualifications.*

*§48.2604. Consumer Eligibility Criteria.*

*§48.2605. Contractor Responsibilities Under Agency, Block Grant, and Vendor Fiscal Intermediary (VFI) Models.*

*§48.2606. Additional Contractor Responsibilities Under the Agency Model.*

*§48.2607. Additional Contractor Responsibilities Under the Block Grant Model.*

*§48.2608. Additional Contractor Responsibilities Under the Vendor Fiscal Intermediary Model.*

*§48.2609. Applicant and Consumer Rights and Responsibilities Under the Agency, Block Grant, and Vendor Fiscal Intermediary Models.*

*§48.2610. Additional Consumer Responsibilities Under the Agency Model.*

*§48.2611. Additional Consumer Responsibilities Under the Block Grant Model.*

*§48.2612. Additional Consumer Responsibilities Under the VFI Model.*

*§48.2613. Suspension and Termination of Services.*

*§48.2614. Consumer Copayment.*

*§48.2615. Determination of Monthly Total Income.*

*§48.2616. Income Exclusions.*

*§48.2617. Allowable Monthly Deductions.*

*§48.2618. Computation of Net Income.*

*§48.2619. Cost Reporting Guidelines for the Consumer-Managed Personal Assistance Services (CMPAS) Program.*

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 L. MINIMUM STANDARDS FOR AGENCIES CONTRACTED TO PROVIDE SPECIAL SERVICES TO PERSONS WITH DISABILITIES

### 40 TAC §48.9301, §48.9302

*(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 Subchapter L, §48.9301 and §48.9302, concerning minimum standards for agencies contracted to provide special services to persons with disabilities, in its Community Care for Aged and Disabled chapter. The purpose of the repeals is to remove the rules from Chapter 48 so they can be rewritten in plain English and proposed as new rules in DHS's new Chapter 58. The new rules are proposed elsewhere in this issue of the *Texas Register*.

Gordon Taylor, 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 repealing the sections.

Bettye Mitchell, Deputy Commissioner for Long Term Care, 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 contracting to provide special services to persons with disabilities will be located in their own chapter so that provider agencies can easily find them. There is no adverse economic effect on small or micro businesses, or on businesses of any size, as a result of repealing the sections, because the sections are not being removed from DHS's rule base; they are simply being relocated and rewritten in a new chapter. 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 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-240, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.0001-22.038.

*§48.9301. Standards Applicable to All Contracted Agencies.*

*§48.9302. Additional Standards Applicable to Contracted Agencies Providing Services in a 24-Hour Attendant Service Setting or Day Care Facility.*

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 58. CONTRACTING TO PROVIDE SPECIAL SERVICES TO PERSONS WITH DISABILITIES

The Texas Department of Human Services (DHS) proposes new Chapter 58, Contracting to Provide Special Services to Persons with Disabilities, consisting of Subchapter A, concerning introduction, §58.1 and §58.3; Subchapter B, concerning provider agency contracts, §58.11, §58.13, and §58.15; Subchapter C, concerning plan of operation, §§58.21, 58.23, 58.25, 58.27, 58.29, 58.31, 58.33, 58.35, and 58.37; Subchapter D, concerning staff development, §§58.41, 58.43, 58.45, 58.47, 58.49, 58.51, 58.53, 58.55, 58.57, 58.59, and 58.61; Subchapter E, concerning service delivery, §§58.71, 58.73, 58.75, 58.77, and 58.79; Subchapter F, concerning emergencies, §§58.91, 58.93, 58.95, 58.97, 58.99, 58.101, and 58.103; Subchapter G, concerning additional requirements for 24-Hour Shared Attendant Care, §§58.111, 58.113, and 58.115; Subchapter H, concerning additional requirements for services provided in an adult day care facility, §58.121 and §58.123; and Subchapter I, concerning claims payments and documentation requirements, §§58.131, 58.133, 58.135, and 58.137.

The purpose of the new sections is to have the rules for the Special Services to Persons with Disabilities (SSPD) Program written in plain English and located in their own chapter. The new rules provide definitions for terms used in the chapter; requirements for provider agencies, including the plan of operation, staff training, delivery of services, and claims payments; and additional requirements for 24-Hour Shared Attendant Care services and for services provided in adult day care facilities. The repeals of SSPD rules that currently are in DHS's Chapter 48, Subchapter L, are found elsewhere in this issue of the *Texas Register*.

Gordon Taylor, 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 having provider agency requirements in their own chapter, apart from other program rules, makes it easier for provider agencies to locate applicable rules. Having the rules in plain English, question-and-answer format, makes the requirements clearer for the public and provider agencies. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because the new rules do not differ substantially from the repealed rules, and the new rules provide better direction to provider agencies of all sizes. 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-240, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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. INTRODUCTION

**40 TAC §58.1, §58.3**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

*§58.1. What is the purpose of this chapter?*

This chapter establishes the requirements for provider agencies contracting to provide services to eligible clients through the Texas Department of Human Services (DHS) Special Services to Persons with Disabilities (SSPD) Program.

*§58.3. What do certain words and terms in this chapter mean?*

The following words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

(1) 24-Hour Shared Attendant Care--A clustered living arrangement that has attendant care available to clients on a 24-hour basis.

(2) Adult day care facility--A facility licensed by the Texas Department of Human Services (DHS) Long Term Care Regulatory (LTCR) under the Human Resources Code, Chapter 103.

(3) Attendant Care--Non-skilled services provided by an unlicensed person, which include personal care, housekeeping, supervision, meal preparation, and escort.

(4) Client--A 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.

(5) Community Care for Aged and Disabled (CCAD)--A group of DHS programs that provides a variety of state-funded and Title XIX-funded community-based services.

(6) Contract--The formal, written agreement between DHS and a provider agency to provide services to DHS clients eligible under this chapter in exchange for reimbursement.

(7) Contract manager--A DHS employee who is responsible for the overall management of the contract with the provider agency.

(8) Days--Any reference to days means calendar days, unless otherwise specified in the text. Calendar days include weekends and holidays.

(9) DHS--The Texas Department of Human Services.

(10) Director--The provider agency employee who is responsible for the day-to-day operation of the agency.

(11) Provider agency--An entity that contracts with DHS to provide Special Services to Persons with Disabilities (SSPD) services. Any reference to provider agency means the following, unless otherwise specified in the text:

(A) a home and community support services agency licensed by DHS LTCR under the Health and Safety Code, Chapter 142;

(B) an adult day care facility; or

(C) any other legal entity described in the procedures developed in the DHS region where SSPD services are provided.

(12) Special Services to Persons with Disabilities (SSPD)--A program for CCAD clients that is designed to assist clients in:

(A) developing the skills needed to remain in the community as independently as possible; and

(B) achieve habilitative or re-habilitative goals.

(13) Staff--A provider agency employee or volunteer who provides direct care services to a 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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## SUBCHAPTER B. PROVIDER AGENCY CONTRACTS

**40 TAC §§58.11, 58.13, 58.15**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

*§58.11. What general contract requirements must the provider agency follow?*

The provider agency must:

(1) meet all provisions described in Chapter 49 of this title (relating to Contracting for Community Care Services);

(2) deliver services under the appropriate license for the setting in which the provider agency will deliver SSPD services; and

(3) comply with the plan of operation, which is incorporated in the contract by reference.

*§58.13. What are the settings in which the provider agency may deliver services?*

The provider agency may deliver services in the following settings:

(1) 24-Hour Shared Attendant Care;

(2) an adult day care facility; or

(3) other settings approved by the contract manager.

*§58.15. How is written information sent to DHS?*

Any written information that DHS requires the provider agency to send to DHS must be sent by mail, fax, or hand-delivery. DHS does not accept e-mail delivery.

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. PLAN OF OPERATION

**40 TAC §§58.21, 58.23, 58.25, 58.27, 58.29, 58.31, 58.33, 58.35, 58.37**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

*§58.21. Must the provider agency develop a plan of operation? Yes.*

The provider agency must develop a plan of operation.

*§58.23. What must the provider agency's plan of operation include?*

The provider agency's plan of operation must:

(1) identify the services and tasks the provider agency provides under the contract;

(2) state the hours of operation and the setting in which the services are provided;

(3) specify the number and types of staff delivering the services;

(4) state the qualifications and competencies of staff. The plan of operation must state how the provider agency will ensure that staff receive initial and ongoing training as described in Subchapter D of this chapter (relating to Staff Development);

(5) describe the methods and procedures for determining client eligibility, if this is required by the procedures developed in the DHS region where services are delivered;

(6) describe the services provided to eligible clients. The provider agency must offer the services required by the procedures developed in the DHS region where services are delivered;

(7) describe the methods and procedures for providing services to clients; and

(8) state the method for documenting the services that are delivered.

*§58.25. Who approves the provider agency's plan of operation?*

The contract manager approves the provider agency's plan of operation.

*§58.27. How must the provider agency request approval of the plan of operation?*

The provider agency must make a written request for approval of the plan of operation.

*§58.29. When must the provider agency request approval of the plan of operation?*

The provider agency must request approval of the plan of operation:

(1) to allow the approval to coincide with the effective date of the contract; and

(2) before implementing a change made to an ongoing plan of operation.

*§58.31. When must the provider agency notify the contract manager of a change made to the plan of operation?*

The provider agency must notify the contract manager no later than 30 days before the effective date of change desired by the provider agency.

*§58.33. How must the provider agency notify the contract manager of a change to the plan of operation?*

The provider agency must provide written notice to the contract manager.

*§58.35. How will the provider agency know that a change to the plan of operation has been approved?*

The contract manager will provide written notice of approval or disapproval.

*§58.37. When must the provider agency implement a change to the plan of operation?*

The provider agency must implement a change to the plan of operation on the date the provider agency requests to implement the change in the plan of operation. This date cannot be before the date the contract manager provides written approval of the 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 D. STAFF DEVELOPMENT

**40 TAC §§58.41, 58.43, 58.45, 58.47, 58.49, 58.51, 58.53, 58.55, 58.57, 58.59, 58.61**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

*§58.41. What are the provider agency's responsibilities for staff development?*

The provider agency must:

(1) maintain a written plan for developing and enhancing the performance of staff responsible for providing the SSPD services; and

(2) ensure that staff are trained and competent to provide services to clients according to the service plan.

*§58.43. What must the provider agency's written plan for staff development include?*

The provider agency's written plan for staff development must include the:

(1) schedule for training, including the length of time;

(2) curriculum, including specific topics;

(3) training objectives;

(4) method of training; and

(5) names of the instructors.

*§58.45. What initial training must the provider agency give staff?*

The provider agency must give all staff the following training during the first three months of employment:

(1) three hours of training on the following topics:

(A) orientation to community resources;

(B) the provider agency's policies and procedures;

(C) 29 United States Code §794 (relating to Nondiscrimination under Federal grants and programs); and

(D) confidentiality of records; and

(2) 21 hours of training on the following topics, which may be on-the-job training under the supervision of tenured staff and must include:

(A) techniques of working with persons with disabilities to assist them in living as independently as possible; and

(B) knowledge of the individual clients' conditions.

*§58.47. Which training requirements may be waived?*

The contract manager may waive the additional 21 hours of training.

*§58.49. How must the provider agency request a waiver for the additional 21 hours of training?*

The provider agency must make a written request for a waiver from the contract manager.

*§58.51. When must the provider agency request a waiver for the additional 21 hours of training?*

The provider agency must request the waiver at least 30 days before a staff member requiring a waiver provides any services.

*§58.53. How will the provider agency know if the waiver request is approved?*

The contract manager will send a written notice of approval or disapproval to the provider agency.

*§58.55. Can a staff member who requires a waiver provide any services before approval of the waiver?*

No.

*§58.57. What information must the provider agency include in the request for a waiver?*

The provider agency must include the following information for each staff member for whom it requests a waiver:

(1) name;

(2) job title;

(3) specific education or experience that qualifies the staff member for the waiver; and

(4) a statement that he or she is competent in providing services.

*§58.59. What ongoing training must the provider agency give staff?*

The provider agency must give direct care staff at least two hours of ongoing training every three months, after the first three months of employment.

*§58.61. What must the provider agency include in the ongoing training?*

The provider agency must include in-service training related to the direct services provided by staff in the ongoing training.

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. SERVICE DELIVERY

**40 TAC §§58.71, 58.73, 58.75, 58.77, 58.79**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

*§58.71. What services must the provider agency deliver?*

The provider agency must deliver services identified in:

(1) the client's service plan; and

(2) the provider agency's plan of operation.

*§58.73. What is the client's service plan?*

The client's service plan is a document that contains the services, tasks, and frequency of services a particular client will receive. These services must be part of the provider agency's service array outline in the plan of operation.

*§58.75. Who must develop the service plan?*

The provider agency must develop the service plan.

*§58.77. When must the provider agency develop the service plan?*

The provider agency must develop the service plan before services are initiated.

*§58.79. When must the provider agency initiate services?*

The provider agency must initiate services:

(1) within 14 days after the referral date (Item 1) on the DHS Authorization for Community Care Services form; or

(2) as required by the procedures developed in the DHS region where services are delivered.

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. EMERGENCIES

**40 TAC §§58.91, 58.93, 58.95, 58.97, 58.99, 58.101, 58.103**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

*§58.91. What is considered an emergency?*

(a) An emergency is an unforeseen circumstance or combination of circumstances involving a client that:

(1) requires immediate action on the part of the provider agency; or

(2) results in a client's urgent need for assistance or relief.

(b) Emergencies are described in more detail in the procedures developed in the DHS region where services are delivered.

*§58.93. Who must the provider agency notify of emergencies?*

The provider agency must report any emergencies to:

(1) the contract manager; and

(2) any other persons or entities required by the procedures developed in the DHS region where services are delivered.

*§58.95. When must the provider agency notify the required persons of emergencies?*

The provider agency must notify the required persons by the next working day after the emergency. A working day is a day DHS is open for business.

*§58.97. How must the provider agency notify the required persons of emergencies?*

(a) The provider agency must notify the required persons of emergencies orally or by fax.

(1) Voice mail is not considered oral notification.

(2) The provider agency must notify other staff designated by the contract manager if the contract manager is not available.

(b) If the provider agency's first notification is oral, the provider agency must send written notification to the required persons by the seventh day after the initial notification.

*§58.99. What information must the provider agency give to the required persons in the notice of emergencies?*

The provider agency must give the following information to the required persons in the notice of emergencies:

(1) the date of the emergency;

(2) a description of the emergency;

(3) how the emergency was handled; and

(4) the outcome or resolution of the emergency.

*§58.101. Where must the provider agency maintain documentation of emergencies?*

The provider agency must maintain documentation of emergencies in the client file.

*§58.103. What documentation of emergencies must the provider agency maintain?*

The provider agency must maintain the following documentation of emergencies:

(1) the type of the emergency;

(2) the name of the person or entity or both notified of the emergency;

(3) the date the notice was given;

(4) the method of notice; and

(5) the information described in §58.99 of this chapter (relating to What information must the provider agency give to the required persons in the notice of emergencies?).

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. ADDITIONAL REQUIREMENTS FOR 24-HOUR SHARED ATTENDANT CARE

**40 TAC §§58.111, 58.113, 58.115**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

*§58.111. What are the additional requirements for provider agencies delivering services in a 24-Hour Shared Attendant Care setting?*

The provider agency must:

(1) be licensed by DHS as a home and community support services agency as described in Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies);

(2) deliver services in the SSPD Program under the Personal Assistance Services or Licensed Home Health categories of licensure;

(3) arrange for each residence to have a telephone or an emergency response device for requesting assistance in emergency situations and for requesting assistance with activities of daily living;

(4) have a written emergency assistance and evacuation plan for each residence. The local fire marshal must approve the evacuation plan;

(5) train all clients in the emergency procedures and evacuation plan within three days from the date of service initiation. The provider agency must document in each client file that the client received the training;

(6) ensure that at least one employee, certified in the following courses, is on the premises during the hours services are provided:

(A) Red Cross standard first aid and personal safety; and

(B) basic life-support and cardiopulmonary resuscitation; and

(7) ensure that there are current physician's orders in accordance with applicable law if the attendant(s) provides delegated medical or nursing tasks. The provider agency must maintain a copy of all physician's orders in the client file.

*§58.113. What are the additional initial training requirements for provider agencies delivering services in a 24-Hour Shared Attendant Care setting?*

In addition to the requirements described in §58.45 of this chapter (relating to What initial training must the provider agency give staff?), the 24-Hour Shared Attendant Care provider agency must train staff on the following within three days of employment:

(1) fire, health, and safety laws; and

(2) the provider agency's plan for emergency evacuation.

*§58.115. Which tasks in 24-Hour Shared Attendant Care require physician's orders?*

The provider agency must obtain physician's orders on tasks as required by the provider agency's license.

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. ADDITIONAL REQUIREMENTS FOR SERVICES PROVIDED IN AN ADULT DAY CARE FACILITY

**40 TAC §58.121, §58.123**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

*§58.121. What are the additional requirements for provider agencies delivering services in an adult day care facility setting?*

The provider agency must:

(1) be licensed by DHS as an adult day care facility as described in Chapter 98 of this title (relating to Adult Day Care and Day Activity and Health Services Requirements);

(2) ensure the director or the director's designee is at the facility during the hours of operation and when clients are present;

(3) train clients in emergency procedures and the evacuation plan within three calendar days from the date of service initiation;

(4) post a monthly schedule of program activities in plain view at least one week in advance of the effective date of the schedule; and

(5) have enough materials for all clients to participate in program activities.

*§58.123. What are the additional initial training requirements for provider agencies delivering services in an adult day care facility setting?*

In addition to the requirements described in §58.45 of this chapter (relating to What initial training must the provider agency give staff?), the adult day care provider agency must train staff on the following within three days of employment:

(1) fire, health, and safety laws; and

(2) the provider agency's plan for emergency evacuation.

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 I. CLAIMS PAYMENT AND DOCUMENTATION REQUIREMENTS

**40 TAC §§58.131, 58.133, 58.135, 58.137**

The new sections are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

*§58.131. What are the recordkeeping requirements for the SSPD Program?*

The provider agency must comply with the following requirements for recordkeeping:

(1) Maintain all records according to:

(A) Chapter 49 of this title (relating to Contracting for Community Care Services);

(B) Chapter 69 of this title (relating to Contracted Services); and

(C) the provider agency's plan of operation.

(2) Maintain records of compliance with the requirements of this chapter.

(3) Maintain financial records:

(A) to support billings to DHS for payment under §58.137 of this chapter (relating to What must the provider agency do to get paid by DHS?);

(B) to document reimbursements made by DHS. The documentation must include:

*(i)* amount of reimbursement;

*(ii)* voucher number;

*(iii)* warrant number;

*(iv)* date of receipt; and

*(v)* any other information necessary to trace deposits of reimbursements and payments made from the reimbursements in the provider agency's accounting system; and

(C) in accordance with generally accepted accounting principles (GAAP) and DHS procedures. A provider agency's financial records must include:

*(i)* deposit slips, bank statements, cancelled checks, and receipts;

*(ii)* purchase orders;

*(iii)* invoices;

*(iv)* journals and ledgers;

*(v)* timesheets, payroll, and tax records;

*(vi)* Internal Revenue Service, Department of Labor, and other government records and forms;

*(vii)* records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation);

*(viii)* equipment inventory records;

*(ix)* records of the provider agency's internal accounting procedures;

*(x)* chart of accounts, as defined by GAAP; and

*(xi)* records of company policies.

(4) Maintain invoices, contracts, and service delivery records of all subcontractors. Maintaining all records to support claims is the responsibility of the prime contractor.

*§58.133. What are the service delivery documentation requirements for the SSPD Program?*

The provider agency must maintain service delivery documentation that contains:

(1) the name of the person delivering the services;

(2) the client's name;

(3) the client's Medicaid number;

(4) the specific coverage period, including month, day, and year, as applicable;

(5) the tasks assigned;

(6) the units of service delivered;

(7) the dates of service delivery; and

(8) certification that the documented services were delivered.

*§58.135. How do persons delivering services certify that they delivered the documented services?*

(a) For electronic service delivery documentation systems, each person delivering services inputs a unique identifier to certify the services delivered.

(b) For paper service delivery documentation systems, each person delivering services signs the timesheet to certify the services delivered.

(1) The person must sign his or her name or a mark representing his or her name on the timesheet to certify that it is correct. Initials are not an acceptable substitute for a signature.

(2) A person delivering the services who is unable to sign the timesheet may designate another person to sign the timesheet. The provider agency must maintain written documentation of the:

(A) reason the person delivering the services is unable to sign the timesheet; and

(B) identity of the person authorized to sign the timesheet on behalf of the person delivering the services.

*§58.137. What must the provider agency do to get paid by DHS?*

(a) The provider agency must provide services as required in its contract, comply with all requirements in this subchapter and in its contract, and comply with the following requirements to receive reimbursement:

(1) Bill for services provided as described in §49.9 of this title (relating to Billings and Claims Payment).

(2) Agree to accept the unit rate DHS authorizes.

(3) Maintain the documentation for reimbursement required in this chapter.

(4) Document services as required by the agency's plan of operation described in §58.23 of this chapter (relating to What must the provider agency's plan of operation include?).

(5) Bill for services provided as required by the agency's plan of operation described in §58.23 of this chapter.

(b) Provider agencies that do not meet these requirements will not be paid or will be required to reimburse DHS for incorrect payments in accordance with §49.9 of this title.

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 October 17, 2003.

TRD-200306873
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 438-3734

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## CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Texas Department of Human Services (DHS) proposes to repeal §97.247, concerning verification of employability of unlicensed persons; proposes new §97.247, concerning verification of employability of unlicensed persons; and proposes to amend §97.401, concerning standards specific to licensed home health services, §97.602, concerning administrative penalties, and §97.701, concerning home health aides, in its Licensing Standards for Home and Community Support Services Agencies chapter.

The purpose of the repeal, amendments, and new section is to implement sections of House Bill 1971 and Senate Bill 1073, 78th Texas Legislature, that amended the Health and Safety Code, Chapter 250, relating to convictions barring employment in certain facilities serving the elderly or persons with disabilities and to remove redundancy and provide clarification. The proposal amends §97.247 to require compliance with Health and Safety Code, Chapter 250, as amended, to include additional convictions barring employment in a licensed HCSSA. Agencies must screen employment candidates for these convictions. The proposal also amends §97.401 and §97.701 to provide clarity by removing redundancy, moving language to a more appropriate location, and removing conflicting language. The amendment to §97.401(d) changes the qualification requirements for a social

worker if the agency provides medical social services. DHS determined that if the social worker is licensed in the state of Texas to provide social work services, the social worker is qualified to provide medical social services. The amendment to §97.401(d) reflects this determination.

The purpose of the amendment to §97.602 is to update rule citations in the table outlining Severity Level I Violations in Figure: 40 TAC §97.602(d)(3)(C) and in the table outlining Severity Level II Violations in Figure: 40 TAC §97.602(d)(4)(B). In Figure: 40 TAC §97.602(d)(4)(B), the administrative penalty relating to employing or contracting with a registered nurse to provide or supervise nursing services was changed to reflect the amendment to §97.401. The amendment to §97.401 removes language that DHS considered to be examples relating to specific health care professionals providing services and moves the current requirements that these health care professionals be employed by or be under contract with the agency into a separate subsection. Section 97.401(c)(1) was listed in the administrative penalty charts as one violation. DHS determined there could actually be two separate violations: one relating to services being provided and supervised by the appropriate health care professional (listed in the table as §97.401(d)) and the other relating to employing or contracting with the health care professional (listed in the table as §97.401(e)). The amendment to the penalty charts in §97.602 reflects this determination. DHS also determined that violation of these requirements should be expanded to include all health care professionals.

Gordon Taylor, 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 section relating to the verification of employability is better protection for clients receiving services from unlicensed staff. The public benefit anticipated as a result of enforcing the other sections is to provide clarification and remove conflict. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because there will be no additional cost to licensed agencies to comply with the changes. 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 Linda Kotek at (512) 438- 3158 in DHS's Long Term Care-Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-325, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES
## DIVISION 3. AGENCY ADMINISTRATION

### 40 TAC §97.247

*(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 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 repeal implements the Health and Safety Code, §§142.001-142.030.

*§97.247. Verification of Employability of Unlicensed Persons.*

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 October 17, 2003.

TRD-200306887
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 §97.247

The new section is proposed 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 new section implements the Health and Safety Code, §§142.001-142.030.

*§97.247. Verification of Employability of Unlicensed Persons.*

(a) Each agency 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).

(b) To verify that an applicant is not listed with a finding concerning abuse, neglect, or mistreatment of a consumer of an agency or a facility licensed under the Health and Safety Code, Chapter 142, or misappropriation of a consumer's property, an agency must search the nurse aide registry and the employee misconduct registry by calling DHS's toll-free number, 1- 800-452-3934.

(c) Criminal history checks and registry searches of employees or applicants for employment must be kept with the agency's personnel records.

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-200306888

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 D. ADDITIONAL STANDARDS SPECIFIC TO LICENSE CATEGORY AND SPECIFIC TO SPECIAL SERVICES

**40 TAC §97.401**

The amendment is proposed 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.

*§97.401. Standards Specific to Licensed Home Health Services.*

(a)-(b) (No change.)

(c) Agency staff must provide at least one home health service.

(d) All services must be provided [~~rendered~~] and supervised by qualified personnel. The appropriate licensed health care professional must be available to supervise as needed, when services are provided. If medical social service is provided, the social worker must be licensed in the state of Texas to provide social work services.

(e) All staff providing services, delegation, and supervision must be employed by or be under contract with the agency.

[~~(1) If nursing service is provided, a registered nurse must be employed by or be under contract with the agency to provide services or supervision.~~]

[~~(2) If physical therapy service is provided, a physical therapist must be employed by or be under contract with the agency to provide services or supervision.~~]

[~~(3) If occupational therapy service is provided, an occupational therapist must be employed by or be under contract with the agency to provide services or supervision.~~]

[~~(4) If speech-language pathology services are provided, a speech-language pathologist must be employed by or be under contract with the agency to provide services or supervision.~~]

[~~(5) If audiology services are provided, an audiologist must be employed by or be under contract with the agency to provide services or supervision.~~]

[~~(6) If medical social service is provided, a social worker with a bachelor's degree in social work from an accredited college or university must be employed by or be under contract with the agency to provide services or supervision. When medical social service is provided in an agency with a home dialysis designation, the social worker must meet the qualifications in §97.405(e)(3) of this title (relating to Standards Specific to Agencies Licensed to Provide Home Dialysis Services).~~]

[~~(7) If nutritional counseling is provided, a dietitian or registered nurse must be employed by or be under contract with the agency to provide services or supervision.~~]

[~~(8) If services are provided by unlicensed personnel, a qualified person must be employed by or be under contract with the agency to provide the service and a registered nurse must be employed by or be under contract with the agency to perform the initial health assessment, prepare the client care plan, as appropriate, and supervise the unlicensed personnel.~~]

[~~(9) If respiratory therapy service is provided, a respiratory therapist must be employed by or be under contract with the agency to provide services.~~]

(f) [~~(d)~~] An agency is not required to employ home health aides. If an agency employs home health aides, the agency must comply with [~~may use a home health aide who meets the qualifications in~~] §97.701 of this chapter [~~title~~] (relating to Home Health Aides) [~~or other individuals under the supervision of a registered nurse or physician. This subsection applies only to an agency providing licensed home health services that implements a home health aide training and competency evaluation program~~].

[~~(1) An agency providing licensed home health services is not required to utilize home health aides.~~]

(g) Unlicensed personnel employed [~~utilized~~] by an agency to provide [~~providing~~] licensed home health services must:

(1) have demonstrated [~~be at least 18 years of age and must demonstrate~~] competency in the task assigned when competency cannot be determined through education and experience; and[.]

(2) be at least 18 years of age or, if under 18 years of age, be a high school graduate or enrolled in a vocational education program [~~An unlicensed person who is under 18 years of age, is a high school graduate or is enrolled in a vocational educational program, and has demonstrated competency to perform the tasks assigned by the supervisor, may perform licensed home health services~~].

[~~(2) An agency providing licensed home health services that implements a home health aide training and competency evaluation program must meet the requirements in §97.701(d)-(f) of this title (relating to Home Health Aides).~~]

[~~(3) An agency providing licensed home health services that implements a home health aide competency evaluation program must comply with §97.701(f) of this title (relating to Home Health Aides).~~]

[~~(4) Since the individual's most recent completion of a training and competency evaluation program or a competency evaluation program, if there has been a period of 24 consecutive months during which the individual has not furnished home health services, the individual will not be considered as having completed a training and competency evaluation program or a competency evaluation program.~~]

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-200306889
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 F. ENFORCEMENT

**40 TAC §97.602**

The amendment is proposed 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.

*§97.602. Administrative Penalties.*

(a)-(c) (No change.)

(d) Schedule of penalties.

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

(3) Severity level I. A severity level I violation is a violation that has or has had minor or no client health or safety significance.

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

(C) A violation of each of the rules listed in the following table may warrant a severity level I administrative penalty.
Figure: 40 TAC §97.602(d)(3)(C)

(4) Severity level II.

(A) (No change.)

(B) DHS may assess a separate level II administrative penalty for a violation of each of the rules listed in the following table.
Figure 40 TAC §97.602(d)(4)(B)

(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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TRD-200306890
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: November 30, 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 proposed 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.

*§97.701. Home Health Aides.*

(a) (No change.)

(b) A home health aide must have provided home health services within the previous 24 months to qualify under subsection (a)(3) or (4) of this section.

(c) Assignment, delegation, and supervision of services provided by home health aides must be performed in accordance with rules in this chapter governing the agency's license category.

[~~(b) Tasks to be performed by a home health aide must be assigned by and performed under the supervision of a registered nurse (RN) who must be responsible for the client care provided by a home health aide.~~]

[~~(c) A home health aide may perform those tasks that are delegated and supervised by an RN in accordance with §97.298 of this chapter (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation).~~]

(d)-(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.

Filed with the Office of the Secretary of State on October 17, 2003.

TRD-200306891
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 438-3734

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# PART 2. TEXAS REHABILITATION COMMISSION

## CHAPTER 115. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

The Texas Rehabilitation Commission (TRC) proposes a change to Title 40, Chapter 115, concerning memoranda of understanding with other state agencies. The change repeals and replaces §115.8 to update a memorandum of understanding dealing with the provision of services needed to prepare students enrolled in special education to transition from public school to adult life, which was first adopted in 1990.

Article IX, Section 10.04 of the General Appropriations Act, 78th Legislature, Regular Session (2003), requires that the Texas Education Agency (TEA), the Texas Department of Mental Health and Mental Retardation (TDMHMR), and TRC, by a cooperative effort, develop and by rule adopt an MOU. The section specifies that the TEA, the TDMHMR, and the TRC may request other appropriate agencies to participate in the development of the MOU. Accordingly, the adopted MOU includes the participation of the following agencies: Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Department of Health, Texas Department of Housing and Community Affairs, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Department of Protective and Regulatory Services, Texas Education Agency, Texas Higher Education Coordinating Board, Texas Juvenile Probation Commission, Texas Rehabilitation Commission, Texas Workforce Commission, and Texas Youth Commission.

The adopted new MOU addresses respective roles and responsibilities of participating agencies in the sharing of information about, and coordination of services to, eligible students with disabilities receiving special education services. The new MOU clarifies and adds definitions and better addresses information sharing and agency participation, regional and local collaboration, cross-agency training, and dispute resolution. Other terms of the MOU provide for the MOU to be reviewed and considered for expansion, modification, or amendment at any time the executive officers of the parties agree or at least every four years.

Bill Wheeler, Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no material fiscal implications for state or local government. There will be no affect to small or micro businesses.

Mr. Wheeler also 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 will be the agency's compliance with Chapter 111, Human Resources Code. There will be no material effect on small businesses. There is no material anticipated economic cost to persons who are required to comply with the section as proposed. In accordance with Government Code §2001.022, TRC has determined that the proposed rule will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

**40 TAC §115.8**

*(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 Rehabilitation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed 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.

No other statute, article, or code is affected by this proposal.

*§115.8. To Define the Role of the Texas Rehabilitation Commission for the Provision of Services Needed To Prepare Students Enrolled in Special Education To Transition from Public School to Adult Life.*

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 October 20, 2003.

TRD-200306905
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 424-4050

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**40 TAC §115.8**

The new section is proposed 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.

No other statute, article, or code is affected by this proposal.

*§115.8. Memorandum of Understanding on Individual Transition Planning for Students Receiving Special Education Services.*

(a) Participating agencies. The memorandum of understanding (MOU) is established among the following state agencies referred to herein as "the parties":

(1) Texas Commission for the Blind (TCB);

(2) Texas Commission for the Deaf and Hard of Hearing (TCDHH);

(3) Texas Department of Health (TDH);

(4) Texas Department of Housing and Community Affairs (TDHCA);

(5) Texas Department of Human Services (DHS);

(6) Texas Department of Mental Health and Mental Retardation (TDMHMR);

(7) Texas Department of Protective and Regulatory Services (PRS);

(8) Texas Education Agency (TEA);

(9) Texas Higher Education Coordinating Board (THECB);

(10) Texas Juvenile Probation Commission (TJPC);

(11) Texas Rehabilitation Commission (TRC);

(12) Texas Workforce Commission (TWC); and

(13) Texas Youth Commission (TYC).

(b) Purpose.

(1) Under the authority of Texas Education Code (TEC), §29.011 (Transition Planning), the purpose of this MOU is to establish the respective responsibilities of each party for the provision of the services necessary to prepare students receiving special education services for a successful transition to life outside the public school system.

(2) This MOU documents the parties' commitment to collaborative efforts and sharing of resources in providing effective transition services to students receiving special education services.

(c) Philosophy. This MOU is intended to further the development of transition services in Texas that, through a comprehensive array of coordinated services, offers improved choices and opportunities to achieve maximum independence and integration in the community for students receiving special education services. This philosophy reflects the following beliefs:

(1) Transition is a student-centered, student-driven process. Successful transition planning should develop the self-determination skills of each student.

(2) Successful transition is facilitated when each student and his or her parent(s) have the knowledge and skills needed to empower them to plan for the student's future and to make effective use of personal and community resources in achieving independence.

(3) Each student should have opportunities to have a meaningful life and to make informed choices about where to live, work, and play. Each student should have opportunities to fully participate in and be a contributing and respected member of his or her community.

(4) Each student has unique values, preferences, abilities, and challenges. Valuing diversity will enhance the benefits of individual transition planning.

(5) Individual transition planning should be a thoughtful, collaborative process involving the student, the family, school personnel, agencies, community resources, and other stakeholders. Each student should actively participate in identifying his or her individual transition planning committee members.

(6) Individual transition planning should be an integral part of the educational process, not a single event.

(7) The success of individual transition planning is based on the development of ongoing productive working relationships and common goals among all of the parties involved in transition planning. The success of individual transition planning is not dependent upon attendance of all parties at all individual transition planning meetings, although such attendance is encouraged.

(d) Definitions. The following words and terms, when used in this MOU, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Agencies" means the parties, the local entities of the parties, or organizations that provide services and supports to the general public. Participation in this MOU by local workforce development boards may be separately arranged by local agreements. Information regarding specific agency responsibilities is delineated in subsection (e)(4)(C) of this section.

(2) "Admission, review, and dismissal (ARD) committee" means the committee convened for, among other things, the purpose of developing the individualized education program consistent with 34 Code of Federal Regulations (CFR) §300.344 and 19 TAC §89.1050 (relating to The Admission, Review, and Dismissal (ARD) Committee).

(3) "Community experience" means activities that are conducted and provided in community settings, including community-based work experiences and/or exploration, job site training, banking, shopping, transportation, and recreation.

(4) "Employment (individualized competitive employment)" means full-time or part-time competitive employment, including supported employment for which an individual is compensated by the workplace employer at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. This includes the individualized support services that are necessary to maintain the individual in competitive employment. This does not include enclaves, pods in industry, or groups of individuals with disabilities working in an integrated setting.

(5) "FERPA" means the Family Educational Rights and Privacy Act, 20 United States Code (USC) §1232(g), which is a federal law designed to protect the privacy of a student's education records. The law applies to educational institutions and agencies that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student, or former student, who has reached the age of 18 or is attending any school beyond the high school level.

(6) "Functional vocational evaluation" means an assessment process that provides information about job or career interests, aptitudes, and skills. Information may be gathered through situational assessments, observation, or formal measures and should be practical in nature.

(7) "Higher education" means any postsecondary education provided by a public, private, or proprietary college, university, or technical school, including college-level courses, developmental education, and adult continuing education.

(8) "IDEA" means the Individuals with Disabilities Education Act, 20 USC §§1400 et seq., which is a federal law that ensures the provision of special education and related services to eligible students with disabilities.

(9) "Individualized education program (IEP)" means a written education program for a student receiving special education and related services that is developed in an ARD committee meeting and includes the elements described in relevant federal and state requirements consistent with 34 CFR §300.346 and §300.347 and 19 TAC §89.1050.

(10) "Individual transition plan (ITP)" means a written plan that is developed apart from the IEP that focuses on successful independence and integration in the community.

(11) "Local educational agency (LEA)" means, consistent with 20 USC §1401(15), any public authority, institution, or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under state law.

(12) "Parent" includes a biological or adoptive parent whose parental rights have not been terminated, surrogate parent, legal guardian, legal conservator, or person acting in the place of a parent.

(13) "Parties" means signatory agencies to this MOU. Any reference to participation by the "parties" as applied to the TWC is subject to the definition of "agencies" as defined in paragraph (1) of this subsection.

(14) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in school, and parent counseling and training consistent with 34 CFR §300.24.

(15) "Self-determination" means the abilities and attitudes necessary to exercise primary control over one's life and to make choices regarding one's quality of life free from undue external influence or interference.

(16) "Special education" means specially designed instruction and related services, at no cost to the parent(s), to meet the unique needs of a child with a disability consistent with 34 CFR §300.26.

(17) "Student" means an individual with a disability receiving special education services.

(18) "Transition services" means a coordinated set of activities for a student with a disability that meets the criteria described in subparagraph (A) of this paragraph.

(A) Transition services means a coordinated set of activities that:

*(i)* is designed within an outcome-oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

*(ii)* is based on the individual student's needs, taking into account the student's preferences and interests; and

*(iii)* includes:

*(I)* instruction;

*(II)* related services;

*(III)* community experiences;

*(IV)* development of employment and other post-school adult living objectives; and

*(V)* if appropriate, acquisition of daily living skills and functional vocational evaluation.

(B) Transition services for students with disabilities may be special education if provided as specially designed instruction, or related services, if required to assist the student with a disability to benefit from special education consistent with 34 CFR §300.29.

(e) Individual transition planning.

(1) ITP committee members.

(A) The student, the parent, and the LEA have the right to invite participants who have knowledge or special expertise about the student.

(B) Except as provided in subparagraph (C) of this paragraph, transition planning and annual reviews of the ITP shall include, but are not limited to, the following participants:

*(i)* the student (the student shall not be excluded based on age or severity of disability);

*(ii)* the student's parent(s);

*(iii)* the student's special education teacher or person(s) knowledgeable of special education processes and directly involved in the student's educational program; and

*(iv)* person(s) knowledgeable of the general education curriculum and the minimum academic requirements for graduation and the relationship of those requirements to the Academic Achievement Record.

(C) If the student is, or is likely to be, participating in career and technology education as part of his or her IEP, the ITP committee should include a representative from career and technology, preferably the student's teacher.

(D) An LEA may designate one individual to fulfill one or both of the roles described in subparagraph (B)(iii) and (iv) of this paragraph provided such individual meets the requirements specified in that subparagraph.

(E) Based on procedures developed in subsection (f)(1)(D)(i) of this section dealing with participation, the LEA shall invite, subject to paragraph (2) of this subsection, a representative of any agency that is currently providing services to the student to the extent that the LEA has knowledge that the agency is providing services.

(F) The LEA shall invite, subject to paragraph (2) of this subsection, a representative of any other agency that is likely to be responsible or capable of identifying, planning, providing, or paying for transition services.

(G) Other participants may include, subject to paragraph (2) of this subsection, representatives from the community, organizations, or other entities that can assist the student to achieve identified goals.

(H) Participants, in addition to required members, shall be determined based on the individual student's transition needs and plans for the future, and not solely on disability.

(I) The LEA shall take reasonable steps to ensure that all invited participants are afforded the opportunity to attend a student's ITP meeting. If an invited participant cannot attend the meeting, the LEA and the regional and local entities of the parties shall take reasonable steps to ensure participation, including, but not limited to, individual or conference telephone calls, written, or electronic communication.

(J) A meeting may be conducted without a parent and/or student in attendance if the parent or student is unable to attend or chooses not to participate. In this case, the LEA must have a record of its attempts to arrange the meeting at a mutually agreed upon time and place.

(2) Consent for release of confidential information. In order to release student confidential information or to include a student's name on a notice sent to another agency, an LEA must first obtain consent to release confidential educational records and information from each student's parent or the student, if the right to consent has transferred to the student. Each LEA shall seek to obtain such consent with respect to any agency that is or may be responsible for providing or paying for transition services. To the extent that consent is given for the disclosure of information to other agencies, the LEA will ensure that those agencies receive notice of the ITP meeting. Agencies receiving confidential records and information shall protect and maintain the confidentiality of the information received consistent with 34 CFR §§300.560 - 300.577, Part 99, and the agencies' respective confidentiality requirements.

(3) Notice. LEAs must provide written notice of an ITP meeting as follows.

(A) When the student, parent, and school personnel are the only invited participants, notice must be provided at least five school days prior to the meeting. The student, parent, and school personnel may mutually agree to waive this five-school-day timeline. The LEA must maintain written documentation of the waiver in the eligibility folder.

(B) When inviting other participants, in addition to the student, parent, and school personnel, notice must be provided to all participants at least 30 calendar days prior to the meeting. This 30-calendar-day provision may be waived if all invited participants mutually agree. The LEA must maintain written documentation of the waiver in the eligibility folder.

(C) The notice of the ITP meeting must be written in language understandable to the general public and must include:

*(i)* the student's name;

*(ii)* the purpose, date, time, and location of the meeting;

*(iii)* a list of invited participants;

*(iv)* a statement that the student and parent have the right to bring relevant information, resources, and invite other participants who have knowledge or special expertise about the student;

*(v)* the name and telephone number of an LEA contact person; and

*(vi)* a copy of the notice in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(D) When rights transfer to a student, procedures must take place in accordance with the following.

*(i)* In accordance with 34 CFR §300.517(a)(1) and TEC, §29.017(a), the parental rights set forth in TEC, §29.011(e), and this MOU relating to the ITP process, other than the right to notice, transfer to a student when the student reaches 18 years of age, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship. After the student reaches the age of 18, the LEA shall provide any notice required under this paragraph to both the adult student and the parent.

*(ii)* In accordance with 34 CFR §300.517(a)(2) and TEC, §29.017(b), the parental rights set forth in TEC, §29.011(e), and this MOU relating to the ITP process, including the right to receive any notice, transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship.

*(iii)* The notice of an ITP meeting that is required to be given to an adult student and parent does not create a right for the parent to attend or participate in the meeting, or create a right for the parent to consent to the release of confidential information about the student. However, in accordance with paragraph (1)(A) of this subsection, the adult student or the LEA may invite to an ITP meeting individuals who have knowledge or special expertise about the student, including the parent.

(4) Process.

(A) Transition planning process. Before age 13 (or upon initial placement in special education, if a student is initially identified at age 13 or older), or when requested by the student or parent, the LEA must provide each student and the student's parent(s) with information about transition planning. This information shall include:

*(i)* the philosophy and purpose of the individual transition planning process;

*(ii)* the role of the student and parent in the student-driven transition planning process;

*(iii)* the areas of consideration for the individual transition planning process to include the following:

*(I)* employment;

*(II)* housing;

*(III)* recreation and leisure;

*(IV)* post-secondary education and other options;

*(V)* transportation;

*(VI)* reaching age of majority (e.g., PRS conservatorship, guardianship, health benefits); and

*(VII)* physical and mental health needs.

*(iv)* age requirements related to individual transition planning;

*(v)* ITP committee membership;

*(vi)* the relationship between the ITP and the IEP and the processes for their development;

*(vii)* interagency responsibilities and linkages when appropriate;

*(viii)* comprehensive information, as individually appropriate, made available at the annual regional planning meeting; and

*(ix)* the list of opportunities to learn about transition planning developed as a result of the annual regional planning meeting as referenced in subsection (f)(1)(D)(i)(V) of this section.

(B) Individual transition plan development process.

*(i)* The ITP meeting shall be initiated and facilitated by the LEA in collaboration with the student and parent.

*(ii)* The ITP committee shall develop and annually review an ITP for each student enrolled in a special education program who is at least 16 years of age. At each annual review, the ITP committee shall review the student's progress on the ITP and revise the ITP, as appropriate. A student, parent, or party may request the development of an initial ITP for a student younger than age 16. The ARD committee shall determine the need to develop an initial ITP for a student younger than age 16.

*(iii)* The ITP shall be developed as a separate document from the IEP.

*(iv)* A copy of the ITP shall be given to the student and his or her parent(s). One copy per household may be provided if the student and his or her parent(s) reside at the same address. To the extent that consent is granted, a copy of the ITP shall be provided to agencies and others that will assist in the implementation of the ITP.

*(v)* The ITP development process shall begin with a committee discussion of the student's and parents' role in guiding the transition planning process and the student's vision for independence, self-determination, and inclusion in the community. If the student is unable to attend, the LEA will obtain the student's preferences and interests and bring them in writing to the ITP meeting. Any committee member may provide information relevant to the student's ITP.

*(vi)* The ITP committee shall discuss and determine the student's long-range goals in the following areas:

*(I)* employment;

*(II)* housing;

*(III)* recreation and leisure; and

*(IV)* post-secondary education and other options.

*(vii)* The ITP committee shall discuss and determine the student's long-range goals in the following areas, as individually appropriate:

*(I)* transportation;

*(II)* issues relating to reaching age of majority (e.g., PRS conservatorship, guardianship, health benefits);

*(III)* physical and mental health needs; and

*(IV)* other issues impacting transition to life outside the public school system.

*(viii)* The ITP committee shall discuss and identify:

*(I)* strategies and activities for achieving each of the identified goals;

*(II)* how progress toward the goals will be evaluated;

*(III)* a network of support, including, but not limited to, family, friends, coworkers, agencies, and community resources available to the public, that is needed to achieve the student's desired goals;

*(IV)* when, where, and how support services shall be provided by the network of support. It shall also include a description of specific support services; and

*(V)* the responsible parties and/or network of support and projected timelines for each of the goals.

*(ix)* Elements of the ITP that are the responsibility of the student and parent(s) shall be discussed at the meeting and included in the ITP.

*(x)* The ITP may include identification of and referral for potential services, but may not include commitment of services for agencies not attending the meeting. Receipt of agency services by a student is contingent upon determination of eligibility for and the availability of that agency's services.

*(xi)* For students who are incarcerated, the ITP shall identify the needed transition services to facilitate the reintegration of the student to the home community and to the receiving LEA.

(C) Agency responsibility.

*(i)* Regional or local representatives of a party shall attend initial ITP and subsequent ITP review meetings for the students who are currently receiving services from that party.

*(ii)* Agencies are encouraged, based on agreements reached at the annual regional planning meeting and availability of personnel, to attend initial ITP and subsequent ITP review meetings for any student who is not currently receiving, but may be in need of, services.

*(iii)* Regional or local representatives of a party that are unable to attend an initial ITP or subsequent ITP review meeting shall, prior to the meeting, send information or communicate with school personnel through options identified in the annual regional planning meeting.

*(iv)* The elements of the student's ITP to be accomplished by a responsible party shall be included in that party's individualized plan of service for the student.

*(v)* The following services and activities supporting transition shall be initiated and provided on an individual student basis by the LEA:

*(I)* educational programming, including instruction, related services, community experiences, development of employment, other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;

*(II)* community-based instructional alternatives focusing on independent living and employment;

*(III)* appropriate instructional environments within adult settings for students ages 18 - 21; and

*(IV)* referral of students and parents to other agencies for service consideration.

*(vi)* The following services and activities supporting transition shall be initiated and provided by the TRC:

*(I)* the planning, administrative, and staff training costs of providing assistance to LEAs and education service center personnel to plan effectively with students who have disabilities who would benefit from referral to the TRC programs; and

*(II)* the cost of services provided to eligible individuals with disabilities once they have made the transition from the receipt of educational services in school to the receipt of vocational rehabilitation services or other program services provided by the TRC.

*(vii)* The following services and activities supporting transition shall be initiated and provided on an individual student basis by TYC:

*(I)* educational programming, including instruction, related services, and when appropriate, community experiences, development of employment skills, other post-school adult living objectives, and acquisition of daily living skills and functional vocational evaluations;

*(II)* appropriate instructional environments within adult settings for students ages 18 - 21;

*(III)* referral of students and parents to other agencies for services consideration; and

*(IV)* technical assistance and support to LEAs and ESCs to facilitate uninterrupted successful transition planning and reintegration of youth continuing in the public school system, including, but not limited to, records retrieval, identification of community resources, and follow-up services.

*(viii)* Each party shall ensure compliance with this MOU.

(5) Procedural relationship between the development of the ITP and the development of the IEP.

(A) Federal law requires that the IEP for each student, beginning at age 14 (or younger, if determined appropriate by the ARD committee) and updated annually, must include a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced placement courses or a vocational education program).

(B) Federal law requires that the IEP for each student, beginning at age 16 (or younger, if determined appropriate by the ARD committee), must include a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(C) The ITP shall be developed or reviewed apart from the development of the IEP. To minimize scheduling conflicts, the LEA may schedule the development and annual review of the ITP immediately before the ARD committee's development and review of the IEP.

(D) Only those components of the ITP that are the responsibility of the LEA may be incorporated into the student's IEP. Only the failure to implement those components of a student's ITP that are included in the IEP are subject to the due process procedures of IDEA or to TEA complaint procedures.

(E) The time between the ITP meeting and the subsequent ARD committee meeting to incorporate into the IEP those components of the ITP that are the responsibility of the LEA shall be no more than 30 school days.

(F) In the following circumstances, the ARD committee shall establish a timeline for development of an ITP.

*(i)* Once eligibility for special education services is determined for a student who is at least 16 years old, the ITP must be developed within 30 school days of the initial IEP development.

*(ii)* For a transfer student who is at least 16 years old and without a current ITP, an ITP must be developed 30 school days from the final transfer ARD committee meeting.

(G) For a transfer student with an ITP, the ARD committee shall review the ITP and determine the need for revision within 30 school days from the final transfer ARD committee meeting.

(f) Participation.

(1) Annual regional planning meeting (ARPM).

(A) The ARPM shall be held in each of the 20 education service center (ESC) regions in the state in accordance with the terms of this section.

(B) The purpose of the ARPM is to develop common goals, cooperative working relationships, and a written process for implementing and maintaining effective transition planning.

(C) The parties, with the exception of TJPC, shall send regional or local representatives to ARPMs. TYC shall send state, regional, or local representatives to ARPMs in ESC regions in which TYC operated schools are located. Additional participants at the ARPM should include persons with disabilities, their parents or other family members, educators, agencies, representatives from consumer and advocacy organizations, and business and community leaders.

(D) The timeline and procedures for the initial ARPM include the following.

*(i)* By March 1, 2004, and at least annually thereafter, each ESC shall ensure that an ARPM involving the representatives and participants identified in subparagraph (C) of this paragraph is convened to address:

*(I)* the level of regional and local agency participation in transition planning, including, but not limited to, procedures to ensure compliance with subsection (e)(4)(C)(iv) of this section;

*(II)* how notice to agency personnel regarding the ITP meetings shall be provided;

*(III)* consideration of less than 30 calendar days notice for ITP meetings for transfer students due to the importance of the ITP in providing direction for the IEP;

*(IV)* options available if an agency representative is unable to attend an ITP meeting;

*(V)* the development of a list of opportunities for students and parents to learn about transition planning with emphasis on self-determination and making informed choices;

*(VI)* how and by whom future regional planning meetings shall be planned and facilitated;

*(VII)* the process for resolving disputes at the local level;

*(VIII)* the confidentiality of certain information and processes for obtaining consent to release such information; and

*(IX)* how to avoid duplication of efforts by utilizing established groups addressing interagency issues.

*(ii)* By October 1, 2004, the written process for implementing and maintaining effective transition planning as required by subparagraph (B) of this paragraph developed at the ARPM shall be shared with all the participants of the ARPM, as identified in accordance with subparagraph (C) of this paragraph.

(E) During the ARPM, the following comprehensive information regarding regional and local agency services shall be provided to the ESC:

*(i)* a description of services, local availability, and cost (not applicable for TJPC and TYC);

*(ii)* eligibility criteria for services (not applicable for TJPC and TYC);

*(iii)* how to access services, including, but not limited to, regional and/or local contact information (not applicable for TJPC and TYC); and

*(iv)* complaint procedures (not applicable for TJPC and THECB).

(2) Exceptions for the use of school records as assessment data by the parties. The parties agree to accept current relevant school records to use as assessment data, when appropriate, except as indicated below:

(A) TCB: no more than one year old and meets TCB guidelines;

(B) DHS: no more than one year old and meets DHS guidelines;

(C) TDMHMR:

*(i)* Mental Retardation (MR): the person who conducts the determination of mental retardation for eligibility for MR services considers the previous assessment, social history, or relevant record from another entity, including an LEA if it is a valid reflection of the individual's current level of functioning;

*(ii)* MR: the determination of mental retardation includes the establishment of the diagnosis of MR during the developmental periods, (i.e., before age 18). Access to school records up to seven years after graduation is available through the Public Education Information Management System at the LEA or through TEA for up to ten years following graduation; and

*(iii)* Mental Health (MH): determination of eligibility for special education services as a student with emotional disturbance is not the same for eligibility for the priority populations served by mental health services. TDMHMR requires a diagnosis by a licensed practitioner of the Healing Arts to determine if the individual is in the priority population;

(D) TJPC: does not provide direct services, however, the local juvenile probation departments may accept such records;

(E) TWC: does not provide direct services, however, the local workforce development boards may accept such records; and

(F) TRC: no more than three years old and meets TRC guidelines.

(3) Transfer of information.

(A) With the exception of TJPC, parties shall share current service plan information with another part of their agency in a different service area when a student moves. TDMHMR shall share information upon receipt of a written consent by the adult student or the parent/guardian.

(B) With the exception of TJPC, parties shall share current service plan information with the receiving LEA when a student moves upon receipt of a written consent by the adult student or the parent.

(C) All parties shall agree to support or participate in training for the successful implementation of the MOU.

(g) Information sharing.

(1) State. Annually, the TEA will share with the parties an aggregate of relevant information for the purpose of budget development, strategic planning, and service coordination for students with disabilities. The information shall include age, gender, ethnicity, disabilities, and instructional arrangement.

(2) Training. Coordinated training shall be conducted at the state, regional, and local levels. Elements of this training shall include but not be limited to implementation of the MOU, interagency collaboration, community outreach, and best practices. Training shall be organized as follows.

(A) A lead ESC will facilitate the development, with input from the parties, of a training model to be used at the state, regional, and local levels.

(B) Each party shall designate staff to conduct joint interagency training for appropriate state and regional level personnel of the parties and state and regional representatives from agencies.

(C) The regional representatives of the parties shall designate staff to conduct joint interagency training for the local representatives of the parties, participants in the annual regional planning meeting, and students, families, local agencies, and interested members of the community.

(h) Dispute resolution.

(1) Local disputes.

(A) If a local dispute (between or among LEAs and/or local entities of the parties) concerning the implementation of this MOU arises prior to the initial annual regional planning meeting in a particular region, the dispute shall be addressed according to the following procedure.

*(i)* Resolution of the dispute shall first be attempted at the local level. The specific issues involved in the dispute and possible solutions shall be identified and referred to local personnel authorized to make decisions necessary to resolve the dispute.

*(ii)* If resolution is not reached after a reasonable period of time (not to exceed 45 days unless the disputing entities agree otherwise), the disputing entities shall refer the dispute to the TEA for further negotiations toward a mutually agreeable resolution. The TEA will contact the disputing entities and set up a meeting for this purpose.

*(iii)* Disputing entities referring disputes to the TEA shall identify:

*(I)* the nature of the dispute;

*(II)* any resolutions agreed upon;

*(III)* the issues that remain unresolved; and

*(IV)* the contact persons representing the disputing entities.

(B) In accordance with subsection (f)(1)(D)(i)(VII) of this section, each region's initial annual regional planning meeting must address the process for resolving local disputes. Local disputes that arise after these local dispute resolution processes are in place shall be addressed according to the applicable local process.

(2) State agency disputes.

(A) Resolution of disputes concerning implementation of this MOU between two or more parties must first be attempted at the staff level. If resolution is not reached after a reasonable period of time (not to exceed 45 days unless the disputing parties agree otherwise), the disputing parties will refer the dispute to their respective executive officers, or their designees, for further negotiation. The appropriate state officials shall meet to seek resolution of the dispute.

(B) If the chief executive officers of the disputing parties determine that the dispute cannot be resolved at their level, the disputing parties may pursue resolution through the use of mediation pursuant to the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009.

(i) MOU review. This MOU may be reviewed and considered for expansion, modification, or amendment at any time the executive officers of the parties agree or at least every four years.

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 October 20, 2003.

TRD-200306906
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 424-4050

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# PART 20. TEXAS WORKFORCE COMMISSION

## CHAPTER 809. CHILD CARE AND DEVELOPMENT

The Texas Workforce Commission (Commission) proposes the repeal of the following sections of Chapter 809, relating to Child Care and Development:

Subchapter A, General Provisions, §809.1;

Subchapter B, General Management, §809.20;

Subchapter C, Requirements to Provide Child Care, §809.44 and §809.46;

Subchapter D, Self-Arranged Care; §809.61 and §809.62;

Subchapter E, Parent Rights and Responsibilities, §§809.72, 809.78 and 809.79;

Subchapter F, General Eligibility for Child Care, §809.92 and §809.93;

Subchapter G, Child Care for People Transitioning Off Public Assistance, §809.101;

Subchapter H, Children of Parents at Risk of Becoming Dependent on Public Assistance, §§809.121 - 809.123;

Subchapter K, Funds Management, §§809.225, 809.226 and 809.231;

Subchapter M, Appeal Procedure, §809.271;

Subchapter N, Corrective and Adverse Action, §809.283; and

Subchapter O, Child Care Train Our Teachers (TOT) Award, §§809.301 - 809.304, 809.311 - 809.314, 809.331 and 809.332.

The Commission proposes new rules for the following subchapter of Chapter 809:

Subchapter A, General Provisions, §809.1;

Subchapter B, General Management, §809.20;

Subchapter C, Requirements to Provide Child Care, §809.44 and §809.46;

Subchapter D, Self-Arranged Care; §§809.61 - 809.63;

Subchapter E, Parent Rights and Responsibilities, §§809.72, 809.78 and 809.79;

Subchapter F, General Eligibility for Child Care, §809.92 and §809.93;

Subchapter G, Child Care for People Transitioning Off Public Assistance, §809.101;

Subchapter H, Children of Parents at Risk of Becoming Dependent on Public Assistance, §§809.121 - 809.123;

Subchapter K, Funds Management, §§809.225, 809.226 and 809.231;

Subchapter M, Appeal Procedure, §809.271; and

Subchapter N, Corrective and Adverse Action, §809.283.

Purpose

The purpose of the proposed rule changes is, in part, to comply with federal and state statutory requirements. The proposed rule changes also promote the efficient use of available funds providing affordable, safe and nurturing child care services to the maximum number of eligible families in order to enable them to achieve or maintain self-sufficiency. The Commission also proposes removing certain obsolete rule provisions.

Background

The Commission proposes rule changes in order to comply with federal laws regarding the exclusion of certain federal educational loans and monetary allowances paid to certain children of Vietnam veterans from the income eligibility calculation. The Commission also proposes the rule changes in response to Senate Bill 280 (SB 280) enacted by the 78th Legislature, Regular Session, which requires changes in the parent notification period for terminating child care services. SB 280 also allows the Commission the option of discontinuing the Train Our Teacher (TOT) scholarship program.

The proposed rule changes also provide clarification and establish new statewide parameters for local policies involving minimum work-activity hours, reimbursements to providers, and the parent responsibility agreement.

§809.1. Short Title and Purpose.

The Commission proposes repealing §809.1(c) relating to the effective date for the implementation of the child care rules adopted in February 1999. It includes the provision that "...until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999." It also provides that Boards have until December 1, 1999 to implement direct payments to providers for self-arranged child care. The purposes for which these specific rules were adopted have been served, and they are no longer relevant.

The Commission also proposes adding a new §809.1(c) that provides clarification related to the proposed repeal of Subchapter O. Child Care Train Our Teachers (TOT) Award. SB 280 amends §302.066(a) of the Labor Code, making it optional rather than mandatory for the Commission to continue awarding TOT scholarships. Both the 76th and 77th Legislatures appropriated funds specifically to support the TOT scholarship awards. The 78th Legislature, however, appropriated no funds specifically to support the continuation of the TOT scholarships in the 2004 - 2005 biennium.

Furthermore, an evaluation of the first two years of the TOT program indicates that the scholarships are not achieving the results intended. During the 2000 - 2001 biennium, the Commission granted 700 scholarships for students to work toward receiving a Child Development Associate (CDA). Only 38 awardees, however, reported that they actually received the CDA.

As a result of this low success rate and lack of appropriated funds, the Commission proposes repeal of the rules in Chapter 809, Subchapter O. Child Care Train Our Teachers (TOT) Award and intends to discontinue the TOT scholarship program.

The proposed §809.1(c) stipulates that the Texas Workforce Commission will continue to administer and honor TOT scholarships awarded prior to July 1, 2003 under the rules in effect when the scholarship was awarded. The new rule also stipulates that repeal of the TOT award will not prohibit the Commission from enforcing the employment and reporting obligations required of TOT awardees.

§809.20. Leveraging Local Resources.

The Commission proposes changing §802.20(a)(1) by adding subparagraph (B) in order to allow Boards to include certifications of eligible expenditures by private entities in their local match requirements. With the increase in the amount of local match required in the state's General Appropriations Act for the 2004 - 2005 biennium, the ability to certify eligible expenditures by private entities would assist the Boards in securing additional local matching funds.

The federal regulations at 45 CFR, Part 98, §98.53 provide for the use of certified or transferred public funds and for the use of private funds, within certain limitations, to meet the state's matching funds requirements. The Commission's current rules provide for the transfer and certification of public funds for this purpose, and for the donation of private funds. This proposed rule change allows Boards to certify child care expenditures by private entities provided that the expenditures do not expressly or effectively benefit a specific individual, organization, facility or institution.

§809.44. Provider General Liability Insurance Requirements.

The Commission proposes a new §809.44 by changing subsection (a) and adding subsections (b), (c), and (d) in order to set limits on Board policies regarding liability insurance for child care providers. Current rules give the Boards flexibility in determining if general liability insurance will be required and the amount of the liability required for child care providers with signed agreements to serve TWC subsidized children. The proposed rule changes in §809.44 will align the liability insurance requirements for child care with the state requirements stipulated in Chapter 42 of the Human Resources Code.

State law (§42.049 of the Human Resource Code) requires only licensed child care centers to carry $300,000 per occurrence in

general liability insurance. If a center is unable to secure liability insurance or has exhausted the liability limits stipulated in its policy, the Texas Department of Protective and Regulatory Services (TDPRS) may exempt the center from this requirement, and the center must notify parents that they do not carry liability insurance. Furthermore, child care homes do not have to carry liability insurance to be licensed or registered by TDPRS.

Many Boards, however, in their agreements with child care providers require liability insurance in excess of the $300,000 and do not allow an exemption from the requirement as stipulated in the state standards. Most Boards also require liability insurance in their agreements with licensed and registered child care homes, even though these providers are not required by the state to have general liability insurance.

It is the intent of the Commission that Boards not add additional requirements on child care providers that are not required by state law. State law requires liability insurance in the amount of $300,000 per occurrence only for licensed child care centers. TDPRS is the agency responsible for regulating the child care industry and thereby enforces the licensing requirements for that industry.

Boards do not have the authority to regulate or license child care providers in any way, including requiring that providers maintain or obtain liability insurance. The Boards' roles are to ensure that providers that are required to meet the state's licensing requirements are in good standing with TDPRS. Boards are responsible for ensuring that parent choice is the basic foundation upon which the services are delivered. To that end, Boards' contractors may inform parents of the state's licensing requirements so parents can make informed decisions when selecting a child care provider as part of the required consumer education.

Other than consumer education, the Commission intends that no funds be expended on regulatory activities relating to the licensing or monitoring of child care providers, as that is the expressed statutory authority of TDPRS and not an appropriate use of funds by a Board or a Board's contractor. Boards must ensure that they and their contractors do not create the appearance of regulating child care providers. The Boards should take steps to ensure that parents are not under the impression that child care providers with agreements are "approved" or otherwise "regulated" by the Boards or contractors as this would be contrary to the statutory division of authority between the TDPRS and TWC intended by the legislature.

Information obtained from the National Child Care Information Center (NCCIC) reveals that 26 states do not require liability insurance for licensed child care centers. For the 24 states that do require liability insurance for licensed child care centers, the average amount required is $300,000 per occurrence. Of the 50 states, 41 do not require liability insurance for licensed or registered child care homes. Six of those 41 states do require transportation insurance if a provider transports children in care.

Section 809.44(a) specifies that the Boards have the flexibility to determine whether general liability insurance will be required and the amount of such liability only for licensed child care centers. TDPRS requires only licensed child care centers to have liability insurance, therefore, this rule change will align child care rules with TDPRS standards.

Section 809.44(b) is added to prohibit Boards from requiring more coverage for licensed child care centers than the $300,000 currently required by TDPRS.

Section 809.44(c) is added to ensure that licensed child care centers that are required by TDPRS to have liability insurance but are unable to obtain insurance or have exhausted their liability limits must notify TDPRS, the parents and the Board that they do not have liability insurance. However, they must remain eligible to receive child care subsidies as long as they remain licensed by TDPRS.

Finally, §809.44(d) prohibits Boards from requiring liability insurance for licensed or registered child care homes that are not required by the state to have liability insurance.

§809.46. Assessing and Collecting Parent's Share of Cost Share.

The Commission proposes changing §809.46(a) by removing the obsolete paragraph (4). Prior to September 3, 2001, the rules stated that parents or caretakers receiving TANF or SSI were exempt from the parent's share of cost. That exemption was amended effective September 3, 2001 to include only parents who are participating in Choices. Current §809.46(a)(4) was part of the old rules intended to clarify that the parent's share of cost was not waived if the child was the only family member receiving TANF or SSI. This provision became obsolete in September 3, 2001 when the exemption for SSI recipients was repealed. Consequently, §809.44(a)(4) is an obsolete provision intended to provide clarification that is no longer relevant. The Commission proposes removing this obsolete provision.

Repeal of §809.61, Qualifications to Provide Self-Arranged Care and §809.62, Reimbursement for Self-Arranged Care; Addition of §809.61, Qualifications to Provide Unregulated Relative Care, §809.62, Qualifications to Provide Regulated Self-Arranged Care, and §809.63, Reimbursement for Self-Arranged Child Care.

The Commission proposes that child care rules clearly distinguish between regulated self-arranged care and unregulated relative self-arranged care. The Commission proposes repealing the current §809.61, Qualifications to Provide Self-Arranged Care. The Commission proposes establishing a new §809.61, Qualifications to Provide Unregulated Relative Self-Arranged Care. The provisions relating to regulated self-arranged care will be included in a new §809.62, Qualifications to Provide Regulated Self-Arranged Care. The current §809.62, Reimbursement for Self-Arranged Care, will become §809.63.

§809.72. General Parent Rights.

The Commission proposes changing §809.72(5) regarding the notification of termination of child care in order to comply with SB 280 enacted by the 78th Texas Legislature, Regular Session.

The current rule requires written notification by the Board's contractor at least 15 days before the denial, delay, reduction, or termination of child care. SB 280 changes the notification requirement to "not later than the 30th day before" the denial, delay, reduction, or termination of child care. The only exceptions provided by SB 280 are if the 30-day notice would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount appropriated to the Board. Under these circumstances the notice may be provided on the earliest date on which it is practicable for the Board. SB 280 also requires that the written notification include information regarding other child care services for which the recipient may be eligible.

To implement the requirements of SB 280, the Commission proposes changing §809.72(5) by changing the required written notification of denial, delay, reduction, or termination of child care from 15 days to 30 days. Boards will not be required to change their current policies or procedures regarding the allowability of costs or the recoupment of disallowable costs as a result of the extended notification period.

The Commission proposes adding a new §809.72(5)(C) that allows the exceptions to the 30-day notification as stipulated by SB 280. The Commission also proposes adding §809.72(6) to require that the written notification include information regarding other child care services for which the recipient may be eligible.

§809.78. Parent Responsibility Agreement.

The Commission proposes changing §809.78(b)(1) in order to define more clearly how parents must show cooperation with the Office of the Attorney General (OAG), if necessary, to establish paternity and to enforce child support as required by the Parent Responsibility Agreement (PRA).

Not all Boards have the same expectations regarding the parent's responsibility to the OAG in determining paternity or enforcing payment of child support. Some Boards require only that the parent verify a previous submission to the OAG of appropriate documentation related to establishing paternity or non-payment of child support by the absent parent. Once the documentation is submitted, the parent is considered to have cooperated regardless of what subsequently happens.

To address this issue, TWC staff contacted the Texas Department of Human Services (TDHS) to determine how that agency defines this section of the Personal Responsibility Agreement signed by TANF recipients. The proposed change aligns child care rules with the TDHS definition regarding this section of the PRA.

The proposed language stipulates that the parent must cooperate with the Office of the Attorney General on an ongoing basis by: providing information about and helping to locate the absent parent; helping to establish paternity; and appearing in court hearings or other meetings to establish child support.

The Commission also proposes changing §809.78(b)(3) in order to correct the reference to the citation in the Education Code regarding exemption from school attendance as required by the PRA. Current rule cites §21.003 of the Education Code, however, the correct citation should be §25.086.

§809.79. Parent Responsibility Agreement, Sanctions and Exceptions.

The Commission proposes changing §809.79 in order to strengthen the sanctions a Board may impose for non-compliance with the Parent Responsibility Agreement (PRA). The current rule provides that Boards may impose a sanction of an additional parent co-pay of $25 per month for every month of non-compliance with the PRA. Boards have voiced a concern that the additional $25 per month is inconsequential to the parents and is insufficient as an incentive for compliance with the PRA.

The Commission is addressing this concern by proposing to change §809.79(a)(2) to require the Boards to establish a sanction policy that includes the option of terminating the family's child care for non-compliance with the PRA.

§809.92. General Eligibility Requirements.

The Commission proposes changing §809.92(b) by changing the word "parents" to "family" in order to remain consistent with the definition of "family" in §809.91(2).

The Commission also proposes changing §809.92(b)(1) in order to state specifically that the Boards determine income eligibility limits. The Boards, however, shall not set income limits higher than 85 percent of the state median income (SMI) as required by 45 CFR 98.20(a)(2). This change will make the rules consistent with the Commission's intent and the CCDF State Plan. Subsequent references to income limits in §809.121 and §809.122 regarding eligibility for children living at low incomes and children with disabilities are also changed to specifically stipulate that the Board sets income limits for these populations provided that the income limit shall not exceed 85 percent of SMI.

§809.93. Calculating Income.

The Commission proposes changing §809.93(a)(8) to clarify that income from Temporary Assistance for Needy Families (TANF) includes payments for both single-parent families and for two-parent families as provided in Chapters 31 and 34 respectively of the Human Resources Code.

The Commission also proposes changing §809.93(b) by adding paragraph (2) in order to comply with Title 38 USC §1823(c) which states that federal income support for children of Vietnam veterans born with spina bifida and children of women of Vietnam veterans with certain other birth defects shall not be included in determining eligibility and co-payments for federally-assisted programs.

The Commission proposes changing §809.93(b) by adding paragraph (3) in order to comply with the Title 20 United States Code (USC) §1087uu that requires the disregard of federal student aid when determining eligibility for programs funded in whole or in part with federal funds. Specifically, the disregard covers federal work-study programs funded by the *Economic Opportunity Program*, any student financial aid provided by the Bureau of Indian Affairs, and federal student assistance provided by *Higher Education Resources and Student Assistance*. Other educational loans and grants from state and local sources will still be included in calculating income.

§809.101. Transitional Child Care.

The Commission proposes changing §809.101(a) in order to define transitional child care as care provided to former TANF recipients who: were denied cash assistance within the last 30 days and were working at the time their TANF benefits were denied; or have been denied cash assistance due to expiration of time limits within the last 30 days.

Currently, when a TANF recipient loses or is denied cash assistance, child care contractor staff uses DHS's SAVERR system to determine that the parent is eligible for transitional child care. There are some instances, however, when a parent may be eligible for transitional child care services but is not coded as transitional in the SAVERR system. It is the intent of the Commission that Boards request parents to provide proof that they are eligible for transitional child care and that the SAVERR system be used only to verify eligibility for parents coded as transitional in that system.

The Commission proposes changing §809.101 to add subsection (b) that specifically gives Boards the authority to set higher income eligibility limits for transitional child care than their initial eligibility limits, provided the limit does not exceed 85% of SMI.

The Commission proposes this addition in order to clarify its intent and reinforce that provision in the CCDF State Plan.

The Commission proposes redesignating §809.101(b) to (c) and modifying it to add a provision from Chapter 31 of the Human Resources Code which stipulates that 18 months of transitional care be provided only to those Choices volunteers who are eligible for a child caretaker exemption.

The Commission proposes redesignating §809.101(c) to (d) and changing it in order to limit transitional child care to four weeks for clients participating in a Choices activity and who are not employed when their TANF cash assistance expires. As a result of this change, the Commission also proposes repealing the current subsection (d) relating to clients participating in a Choices activity when their TANF cash assistance expires.

§809.121, Children Living at Low Incomes; §809.122, Children with Disabilities

The Commission proposes changing §809.121 and §809.122 by adding §809.121(a)(2) and §809.122(b)(2) to establish a minimum of 30 hours per week that parents must work or participate in training or education activities in order to receive at-risk child care services, or for child care services provided to children with disabilities. Boards, however, may set a higher number of required hours per week. Setting the minimum number of hours in work or training activities at 30 hours a week will increase the consistency of child care eligibility requirements across workforce services.

The Commission recognizes that family circumstances may dictate that exceptions be made to the minimum activity requirements. The Commission proposes adding §809.121(a)(5) and §809.122(b)(3) to allow Boards to reduce the minimum required activity hours per week if the parent's documented medical disability or the parent's need to care for a physically or mentally disabled family member prevents them from participating for the required weekly activity hours.

The Commission proposes adding §809.121(b) and §809.122(c) to provide that each credit hour of postsecondary education will count as three hours of education activity to be applied toward the education activity hours required in §809.121(a)(2) and §809.122(b)(2), respectively.

The Commission believes that requiring parents of children living at low incomes, including parents with children with disabilities, to participate in work or education activities will assist these families in becoming self-sufficient. A recent study by the Heritage Foundation found that if low-income, working families increase the number of hours they work each year from the current 700 to 2000 there would be an 80% reduction in child poverty. The Foundation concluded that policies that encourage work should be included in any poverty-reducing strategy.

§809.122. Children with Disabilities.

The Commission proposes redesignating §809.122(c) to (d) and changing it in order to clarify rule language regarding the age eligibility for a child with disabilities. Current language states that Boards may extend child care services to children with disabilities who are "between the ages of 13 and 19." Current state rule language could be interpreted to mean that services can be provided to 19-year-olds. The federal child care regulations in §98.20(a)(ii) allow child care services to children with disabilities who are under 19 years of age. The Commission proposes changing the language to make it clear that 19 year-olds are not eligible for child care services.

§809.123. Children of Teen Parents.

The Commission proposes changing §809.123(b)(2) to clarify that Boards have the authority to set higher income eligibility limits for children of teen parents than the Board's basic eligibility limits, provided the limit does not exceed 85% of SMI. The Commission proposes this addition in order to clarify its intent and reinforce that provision in the CCDF State Plan.

The Commission proposes changing §809.123(c)(2) in order to clarify when the income of a grandparent must be included in determining income eligibility for a teen parent's child. Current rule language states that if a teen parent "is, or has been, married" then the child's grandparent's income is not included in the income eligibility calculation. Section 809.123(c)(2)(B) was intended to apply only to teen parents not living with their parents. However, some Boards have interpreted it to apply to teen parents residing with their parents. The Commission proposes removing §809.123(c)(2)(B) to clarify that the gross income of the teen's parent(s) is excluded only if the teen does not reside in the same home as the teen's parent(s). The rule change also clarifies that any monetary amount given to the teen parent by his/her parent(s) who are not residing with the teen parent, must be included in calculating the teen parent's income eligibility.

§809.225. Continuity of Care.

The Commission proposes changing §809.225(a) to clarify that families whose transitional child care has expired should be placed in at-risk care, as long as they remain eligible for child care services. In some workforce areas, families whose transitional child care benefits have expired are not rolled into at-risk child care, but put on a waiting list for child care services. That is not the intent of the continuity of care rule. In order to comply with the continuity of care principle, when the family's transitional child care has expired the children should remain in child care as long as the family remains eligible.

§809.226. Provider Payments.

The Commission proposes changing §809.226 in order to remove the obsolete reference to a "master contract" with Boards. The "master contract" referenced in the rule is now called a "Agency-Board" agreement.

§809.231. Provider Reimbursement Rates.

The Commission proposes changing §809.231 by adding new subsections (b) and (c) and relettering subsequent subsections.

The Commission proposes adding §809.231(b) in order to establish Commission expectations that Boards not reimburse any provider more than the individual Board's maximum rate or the provider's published rate whichever is lower. There is no provision in the CCDF federal regulations (45 CFR, Parts 98 and 99) to prohibit a state (or Board) from reimbursing providers at a rate that is higher than the Board's maximum rate. However, the Preamble to the CCDF federal regulations does remind the states of the "...general principle that federal subsidy funds cannot pay more for services than is charged to the general public for the same service."

It is the Commission's expectation that the Boards will adhere to the guidance in the Preamble of the federal CCDF regulations, and that Boards will reimburse providers at the lower of the Board's maximum reimbursement rate or the provider's published rate. That is the current practice among the Boards. However, there is no current rule in place to reinforce that expectation.

The Commission proposes adding §809.231(c) requiring Boards to establish the same maximum rate within each category of care for all regulated providers even if the provider is self-arranged by the parent and does not have a signed agreement with the Board.

Currently, Boards are using three approaches to setting the maximum reimbursement rates for the three categories of providers. Eight Boards reimburse regulated, self-arranged providers at the same rate as regulated providers with signed agreements while unregulated, relative providers are reimbursed at a lower rate. Eleven Boards reimburse all self-arranged providers (regulated facilities and unregulated relatives) at the same lower rate than paid to regulated providers with signed agreements. Nine Boards have three sets of maximum rates for each facility type and age group: one rate for providers with agreements; a lower rate for regulated, self-arranged providers; and an even lower rate for unregulated, relative care.

The Commission understands why Boards would reimburse unregulated, relative providers, who are not required by the state to maintain health and safety standards, at a lower rate than regulated providers who do have to maintain such standards. The Commission, however, believes that the practice of reimbursing regulated providers at different rates simply because the provider has an agreement with the Board limits parental choice since many providers without an agreement may refuse to accept CCDF subsidized children because they will be reimbursed at a lower rate than regulated providers with agreements.

§809.271. Child Care During Appeal.

The Commission proposes changing §809.271(b) regarding continuing child care during the appeal process in order to address concerns raised by Boards regarding the cost of paying for such care. Specifically, the Commission proposes adding a paragraph (8) to stipulate that child care services shall not be provided during the appeal process if child care was terminated, reduced, denied or delayed due to the parent's failure to report, within 10 days, changes in a family's circumstance that would make them ineligible for child care services.

The Commission also proposes changing §809.271(b)(4) to clarify that child care services shall not be provided during the appeal process if the child's care was terminated, reduced, denied or delayed due to lack of funding caused by an increase in the number of enrolled children in state and Board priority groups.

§809.283. Corrective and Adverse Action.

The Commission proposes changing §809.283(e) in order to correct the rule citation regarding sanctions that may be imposed on a contractor for failure to comply with the Service Improvement Agreement. The list of possible sanctions is provided in §809.283(a), not in §809.283(b) as §809.283(e) currently states.

Repeal of Subchapter O, Child Care Train Our Teachers (TOT) Award

The Commission proposes repealing the rules regarding the Train Our Teachers (TOT) Award and discontinuing the scholarship program based on authority granted in SB 280 enacted by the 78th Legislature, Regular Session.

Coordination with the Local Workforce Development Boards: In the development of these rules for publication and public comment, the Commission sought and received the involvement of each of Texas' twenty-eight Local Workforce Development Boards. The Commission provided policy concepts to the Boards for consideration and review pursuant to Texas Labor Code §302.064 and the Commission's Resolution Regarding Board Coordination in Policy Development adopted September 24, 2002. Prior and during this rulemaking process, the Commission considered the Boards' contributions. In addition, the Commission held discussions with the Child Care Network and the Workforce Leadership of Texas (WLT) Policy Committee regarding the development and implementation of these rules.

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the repeal and new sections will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the repeal and new sections;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal and new sections;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the repeal and new sections;

There are no foreseeable implications relating to costs or revenue of the state or local government as a result of enforcing or administering the repeal and new sections; and

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because the rules do not require small businesses to take any action.

Donna Garrett, Director of Child Care Services, 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 rules will be to provide child care services to the maximum number of low-income families eligible under state and federal law.

Mark Hughes, Acting Director of Labor Market Information, has determined that the proposed rules would not affect private employment. Mr. Barnes does not expect any significant impact upon overall employment conditions in the state as a result of the proposed rules.

Comments on the proposal may be submitted to John Moore, Office of the General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778-0001, (512) 463-3041. Comments may also be submitted via fax (512) 463-2220 or e-mail John.Moore@twc.state.tx.us. Comments must be received by the Commission within 30 days from the date the proposal is published in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §809.1

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.1. Short Title and Purpose.*

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 October 16, 2003.

TRD-200306829
John Moore
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 463-2573

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**40 TAC §809.1**

The new rule is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rule affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.1. Short Title and Purpose.*

(a) The rules contained in this chapter may be cited as the Child Care and Development Rules. The purpose of these rules is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the Commission, fully integrating child care services with other workforce training and services under the jurisdiction of local workforce development boards.

(b) For local workforce development areas where there is no certified local workforce development board with an approved plan or the Commission administers the delivery of child care services, the rules contained in this chapter shall apply to the Commission, its contractors, and its providers of services.

(c) The rules effective on July 1, 2003, contained in Chapter 809, Subchapter O, relating to Child Care Train Our Teachers (TOT) Award shall apply to any remaining awards until such awards are closed out. The repeal of Subchapter O as it existed on July 1, 2003, shall not prohibit the Commission from taking action to enforce provisions relating to the awards that were granted prior to the repeal of Subchapter O.

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. GENERAL MANAGEMENT REQUIREMENTS

**40 TAC §809.20**

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.20. Leveraging Local Resources.*

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. GENERAL MANAGEMENT

**40 TAC §809.20**

The new rule is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rule affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.20. Leveraging Local Resources.*

(a) Leveraging Local Funds. The Commission encourages Boards to secure local public and private funds for match to the extent possible to leverage all available resources for child care needs in the community.

(1) A Board may secure local funds for match in the form of one or more of the methods in order to leverage (match) against federal funds available through the Commission:

(A) donations of funds from a private entity;

(B) certification of expenditures by a private entity that represent expenditures eligible for federal match and that were not restricted in their use for a specific individual, organization, facility or institution; or

(C) transfers of funds from a public entity; or

(D) certifications of expenditures by a public entity that represent expenditures eligible for federal match.

(2) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

(b) Securing Local Funds to Access Federal Matching Funds from the Commission.

(1) A Board shall manage the securing of funds, including the selection of pledged and completed donations, transfers, and certifications that are used by the Board to receive federal matching funds through the Commission.

(2) A Board shall ensure that federal matching funds are maximized by securing local funds for match in an amount that may exceed the amount required to match available federal funds.

(c) Documenting Pledged Donations, Transfers and Certifications. A Board shall maintain written documentation of pledged donations, transfers and certifications that contain, at a minimum, the following:

(1) the signature of the representative of the Board;

(2) the signature of the potential contributor;

(3) the potential contributor's commitment to fulfill the pledge of the donation, transfer or certification by paying or certifying the funds to the Commission for use in a specific workforce area on a set payment or certification schedule;

(4) the Board's commitment to use the donated or transferred funds as requested by the contributor, as long as it is consistent with federal regulations at 45 CFR §98.53; and

(5) sufficient information to determine that the funds will be used in a manner consistent with 45 CFR §98.53.

(d) Submitting Pledged Donations, Transfers and Certifications for Acceptance by the Commission. A Board shall submit pledged donations, transfers, and certifications to the Commission for acceptance.

(e) Completing Donations, Transfers and Certifications.

(1) A Board shall ensure that donations of cash and transfers of funds are paid to the Agency and that certifications are also submitted to the Agency.

(2) Donations and transfers are considered complete to the extent that the funds have been paid to the Agency.

(3) Certifications are considered complete to the extent that a signed written instrument is delivered to the Agency that reflects that the public entity has expended a specific amount of funds on eligible child care services.

(f) Reporting. A Board shall report information relating to pledged and completed donations, transfers and certifications as referenced in subsections (d) and (e) of this section and §800.72 of this title (relating to Reporting Requirements).

(g) Monitoring. A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of unmatched federal funds available through the Commission do not exceed an amount that corresponds to the donations, transfers, and certifications that are completed by the end of the program year.

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. REQUIREMENTS TO PROVIDE CHILD CARE

### 40 TAC §809.44, §809.46

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.44. Provider General Liability Insurance Requirements.*

*§809.46. Assessing and Collecting Parent's Share of Cost.*

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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### 40 TAC §809.44, §809.46

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.44. Provider General Liability Insurance Requirements.*

(a) The Boards shall determine whether general liability insurance, including transportation insurance, will be required of licensed child care center providers in their areas and, if so, the amount.

(b) The liability insurance amount required by the Boards shall not exceed the state licensing requirements stipulated in Chapter 42 of the Human Resource Code.

(c) A licensed child care center provider must notify the Texas Department of Protective and Regulatory Services (TDPRS), the parent, and the Board if the provider is unable to secure the required insurance due to financial reasons or for lack of availability of an underwriter willing to issue a policy, or if the provider's policy limits have been exhausted. The provider shall remain eligible to receive Commission-funded child care subsidies as long as the provider is licensed by the TDPRS.

(d) Boards shall not require liability insurance for providers who are not required by state law to have liability insurance.

*§809.46. Assessing and Collecting Parent's Share of Cost.*

(a) For child care funds allocated by the Commission pursuant to its allocation rules (Chapter 800, General Administration, Subchapter B, Allocation and Funding, §800.58 of this title (relating to Child Care)), the following shall apply.

(1) A Board shall set a parent's share of cost policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services) that shall assess parent's share of cost in a manner that results in parent's share of cost:

(A) being assessed to all parents or caretakers, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being based on the family's size and gross monthly income, and may also be based on the number of children in care; and

(C) not exceeding the cost of care.

(2) Parents that are one or more of the following are exempt from paying parent's share of cost:

(A) parents who are participating in Choices;

(B) parents who participate in the Food Stamp Employment and Training; or

(C) parents who have children that are receiving protective services unless the Texas Department of Protective and Regulatory Services assesses parent's share of cost.

(3) Teen parents who live with their parents and who are not covered under exceptions outlined under paragraph (2) of this subsection shall be assessed parent's share of cost. The parent's share of cost is based solely on the teen parent's income.

(b) For child care services funded from sources other than those sources for funds allocated by the Commission for Child Care Services pursuant to its allocation rules, a Board shall set a parent's share of cost policy based on a sliding fee scale that may be the same as or different from the provisions contained in subsection (a) of this section.

(c) Providers shall collect assessed parent's share of cost and subsidies before child care is delivered.

(d) It is the sole responsibility of the provider to collect assessed parent's share of cost and subsidies.

(e) A Board shall establish a policy regarding reimbursement of providers to address consequences for providers in situations when parents fail to pay parent's share of cost and subsidies.

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. SELF-ARRANGED CARE

### 40 TAC §809.61, §809.62

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.61. Qualifications to Provide Self-Arranged Care.*
*§809.62. Reimbursement for Self-Arranged 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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John Moore
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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### 40 TAC §§809.61 - 809.63

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.61. Qualifications to Provide Unregulated Relative Self-Arranged Care.*

(a) A relative who is at least 18 years of age and is one of the following is eligible to provide self-arranged care:

(1) the child's grandparent;

(2) the child's great-grandparent;

(3) the child's aunt;

(4) the child's uncle; or

(5) the child's sibling, if the sibling does not reside in the same household as the eligible child.

(b) A relative providing self-arranged care under this section shall not be reimbursed for more children than permitted by the Texas Department of Protective and Regulatory Services' minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for in self-arranged care situations on a case-by-case basis as determined by the Board.

*§809.62. Qualifications to Provide Regulated Self-Arranged Care.*

(a) If chosen by the parent, a person or entity who has not signed a Provider Agreement is eligible to provide self-arranged care if the person or entity is:

(1) licensed by the Texas Department of Protective and Regulatory Services; or

(2) registered with the Texas Department of Protective and Regulatory Services; or

(3) listed with the Texas Department of Protective and Regulatory Services; or

(4) licensed by the Texas Department of Health as a youth day camp; or

(5) operated and monitored by the United States military services.

(b) A Board shall ensure that requests made by the Texas Department of Protective and Regulatory Services, for specific providers or persons eligible to provide self-arranged care, are enforced for children in protective services.

(c) Before authorizing a person or entity "listed" with the Texas Department of Protective and Regulatory Services to provide child care, a Board shall ensure that there are in effect, under local law, requirements designated to protect the health and safety of children that are applicable to the persons or entities "listed" with the Texas Department of Protective and Regulatory Services. Boards may choose not to allow "listed" providers as self-arranged providers. Pursuant to federal regulations at 45 Code of Federal Regulations §98.41, the requirements shall include:

(1) the prevention and control of infectious diseases (including immunizations);

(2) building and physical premises safety; and

(3) minimum health and safety training appropriate to the child care setting.

*§809.63. Reimbursement for Self-Arranged Care.*

(a) A Board shall ensure that reimbursement for self-arranged care is paid:

(1) to the self-arranged provider; and

(2) after the Board or its contractor receives a complete Declaration of Services Statement (Declaration) verifying that services were rendered.

(b) The Declaration shall contain:

(1) the name, age, and identifying information of the child;

(2) the amount of care provided in terms of units of care;

(3) the rate of payment;

(4) the dates services were provided;

(5) the name and identifying information of the self-arranged provider, including the location where care is provided;

(6) verification by the self-arranged provider that the information submitted in the Declaration is correct; and

(7) additional information as may be required by the Boards.

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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General Counsel
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## SUBCHAPTER E. PARENT RIGHTS AND RESPONSIBILITIES

**40 TAC §§809.72, 809.78, 809.79**

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.72. General Parent Rights.*

*§809.78. Parent Responsibility Agreement.*

*§809.79. Parent Responsibility Agreement, Sanctions and Exceptions.*

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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**40 TAC §§809.72, 809.78, 809.79**

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.72. General Parent Rights.*

Parents have the right to:

(1) have persons represent them when applying for child care;

(2) notification of their eligibility to receive child care within 20 days from the day the Board's contractor receives all necessary documentation required to determine eligibility for child care;

(3) receive child care regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

(4) have the Board and the Board's contractor treat as confidential information that is used to determine eligibility for child care;

(5) written notification by the Board's contractor at least 30 days before the denial, delay, reduction, or termination of child care unless the following exceptions apply:

(A) Notification of denial, delay, reduction, or termination in child care is not required when child care is authorized to cease immediately because either the parent is no longer participating in the Choices program; or child care is authorized to end immediately for children in protective services child care;

(B) The Choices program participants and children in protective services child care are notified, of denial, delay, reduction, or termination of child care and the effective date of such actions by the Choices case worker or the Texas Department of Protective and Regulatory Services;

(C) If the notice on or before the 30th day before denial, delay, reduction or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount appropriated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice; and

(6) written notification of denial, delay, reduction or termination shall include information regarding other child care services for which the recipient may be eligible.

*§809.78. Parent Responsibility Agreement.*

(a) The parent or caretaker of a child receiving Commission-funded employment or training related child care services is required to sign a parent responsibility agreement as part of the child care enrollment process, unless covered by the provisions of Human Resources Code, §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility re-determination.

(b) The parent responsibility agreement requires that:

(1) each parent shall cooperate with the Title IV-D agency if necessary to establish paternity of the parent's children and to enforce child support on an ongoing basis by:

(A) Providing information about the absent parent;

(B) Helping to locate the absent parent;

(C) Helping to establish paternity; and

(D) Appearing at court hearings or other meetings to establish child support;

(2) each parent shall not use, sell, or possess marijuana or a controlled substance in violation of Health and Safety Code, Chapter 481, or abuse alcohol;

(3) each child in the family younger than 18 years of age attend school regularly, unless the child has a high school diploma or a high school equivalency certificate or is specifically exempted from school attendance by Education Code, §25.086.

(c) Failure to comply with the provisions of the parent responsibility agreement may result in sanctions.

*§809.79. Parent Responsibility Agreement, Sanctions and Exceptions.*

(a) The following shall apply to sanctions for non-compliance with the Parent Responsibility Agreement.

(1) Definitions. For purposes of this subsection, the following words and terms used in this subsection shall have the following meanings unless the context clearly indicates otherwise.

(A) Sufficient documentation of current participation in, or completion of, a drug or alcohol abuse treatment program--Verifiable, written documentation from a person licensed by the State of Texas and thereby permitted to furnish drug or alcohol treatment services independently, that the parent or caretaker is currently enrolled in a medically supervised and approved drug or alcohol abuse program and is participating in said program as directed; or that said parent or caretaker has participated in and acceptably completed such a program, post noncompliance.

(B) Documentation of the parent's or caretaker's cooperation--The written documentation signed by a judge, sheriff, sheriff's deputy, constable, or other sworn and licensed peace officer of the State of Texas; or a school principal or assistant principal that such parent or caretaker is cooperating with appropriate authorities concerning the child's failure to attend school regularly.

(C) Appropriate authorities--The school principals, assistant principals, or school district counselors, of the school district or system in which the child is enrolled, as well as the other officials cited in subparagraph (B) of this paragraph.

(2) Sanctions. Failure by the parent or caretaker to comply with any of the provisions of §809.78 of this chapter (relating to Parent Responsibility Agreement) shall result in sanctions as determined by the Board up to and including terminating the family's child care services.

(b) Exceptions from Parent Responsibility Agreement Requirements.

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

(A) Reasonable--Those efforts which a willing, committed person would make to establish paternity, including but not limited to, appropriate lawsuit in a court of competent jurisdiction to establish paternity.

(B) Incestuous--Sexual intercourse between persons as described in Texas Penal Code §25.02(a).

(C) Domestic Violence--Such mental or physical abuse committed against a person as would reasonably cause and did cause the injured person grievous bodily, emotional, or mental harm.

(2) Notwithstanding the requirements set forth in §809.78(b) of this chapter, the parent or caretaker is not required to comply with those requirements if one or more of the below situations exist.

(A) the paternity of the child cannot be established after a reasonable effort to do so;

(B) the child is the product of an incestuous relationship; or

(C) the parent of the child is a victim of domestic violence.

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. GENERAL ELIGIBILITY FOR CHILD CARE

### 40 TAC §809.92, §809.93

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.92. General Eligibility Requirements.*

*§809.93. Calculating Income.*

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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### 40 TAC §809.92, §809.93

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.92. General Eligibility Requirements.*

(a) The eligibility criteria set forth in this chapter are based primarily on the federal and state funding limitations. Nothing in this chapter shall be applied in a manner that conflicts with those limitations and the limitations contained in the use-of-funds provisions in the Commission's child care allocation rule contained in Subchapter B of Chapter 800 of this title (relating to Allocations and Funding).

(b) For a child to be eligible for child care services, the child's family shall:

(1) have a total gross income that does not exceed the income limit established by the local Board, which income limit must not exceed 85% of the state median income for a family of the same size;

(2) require child care to participate in training, education, or employment activities; and

(3) need the child care for a child under thirteen years of age, unless a different age requirement is indicated in the applicable eligibility rule contained in this chapter.

(c) For purposes of this chapter, child care is needed to support participation in education for a limited time as determined by the Board.

*§809.93. Calculating Income.*

(a) Unless otherwise required by federal or state law, the "total gross income" of the family for purposes of determining eligibility means the monthly total of the following items listed.

(1) Total gross earnings before deductions are made for taxes. These earnings include money, earnings of a child between 14 and 18 years old who is not in school, wages, or salary the family member receives for work performed as an employee. Wages or salaries include armed forces pay (including allotments from any armed forces received by a family group from a person not living in the household), commissions, tips, piece-rate payments, and cash bonuses earned. Overtime pay is estimated based on the person's history of receiving this pay.

(2) Net income from non-farm self-employment. These earnings include gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Gross receipts include the value of all goods sold and services given. Expenses include costs of purchased goods, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes or self-employment Social Security tax), and similar costs. The value of salable merchandise used by the owners of retail stores is not included as part of net income.

(3) Net income from farm self-employment. These earnings include gross receipts minus operating expenses from operation of a farm by the client or the parent and his partners. Gross receipts include the value of products sold; governmental crop loans; and incidental receipts from the sale of wood, sand, mineral royalties, gravel, and similar items. Operating expenses include the cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm workers, depreciation, cash rent, interest on farm mortgages, repairs of farm buildings, farm-related taxes (not personal income taxes or self-employment Social Security tax), and similar expenses. The value of fuel, food, or other farm-related products used for the family's living expenses is not included as part of net income.

(4) Social security and railroad retirement benefits. These benefits include Social Security pensions and survivor's benefits, permanent disability insurance payments made by the Social Security Administration (before deductions for medical insurance), and railroad retirement insurance checks from the federal government. Gross benefits from these sources are the amounts before deductions for Medicare insurance.

(5) Dividends and interest. These earnings include dividends from stock holdings or membership in associations, interest on savings or bonds, periodic receipts from estates or trust funds, and net royalties. Such earnings are averaged for a 12-month period.

(6) Income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers. These earnings include net income from rental property, which is calculated by prorating and subtracting the following from gross receipts:

(A) prorated property taxes;

(B) insurance payments;

(C) bills for repair and upkeep of property; and

(D) interest on mortgage payments on the property. Capital expenditures and depreciation are not deductible.

(7) Interest income from mortgages or contracts. These payments include interest income the buyer promises to pay in fixed amounts over a period of time until the principal of the note is paid.

(8) Public assistance payments. These payments include Temporary Assistance for Needy Families (TANF) as authorized under Chapter 31 or 34 of the Human Resources Code, refugee assistance, Social Security Insurance, and general assistance (such as cash payments from a county or city).

(9) Pensions, annuities, and irrevocable trust funds. These payments include pensions or retirement benefits paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company. Also included are periodic payments from annuities, insurance, or irrevocable trust funds. Gross benefits from civil service pensions are benefits before deductions for health insurance.

(10) Veteran's pensions, compensation checks, and G.I. benefits, except as provided in subsection (b) of this section. These benefits include money paid periodically by the Veteran's Administration to disabled veterans of the armed forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training and refunds paid to ex-servicemen as G.I. insurance premiums. The Commission or the contracted provider includes only that part of the educational allowance that is used for current living costs.

(11) Educational loans and grants. These payments include money received by students as scholarships for educational purposes, except as provided in subsection (b) of this section. The Commission includes only that portion of the money actually used for current living costs.

(12) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits from union funds paid to people while they are unemployed or on strike.

(13) Workers' compensation and disability payments. These payments include compensation received periodically from private or public insurance companies for on-the-job injuries.

(14) Spousal maintenance or alimony.

(15) Child support. These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a minor child who is a student, or any informal child support payments made by an absent parent for the maintenance of a minor.

(16) Cash support payments. These payments are regular cash support payments from friends or relatives received on a periodic basis more than three times a year.

(17) Inheritance. This is net income from the parent's share of an inheritance.

(18) Foster care payments. The total payment made to a parent on behalf of a legally assigned foster child or foster adult is counted as income.

(19) Sale of property. This includes capital gains from sale of property.

(b) Income to the family that is not included in subsection (a) of this section is excluded in determining the total gross income. Income does not include:

(1) Food Stamps;

(2) Monthly monetary allowance provided to or for children of Vietnam veterans born with spina bifida and children of women Vietnam veterans with certain other birth defects; or

(3) Income from the following federal scholarships, grants and loans authorized by 20 U.S.C.A., Section 1087uu, *Disregard of Student Aid in Other Federal Programs* are exempt from the income calculation:

(A) Federal Work-Study Programs funded under Part C, Subchapter I of Chapter 34 of Title 42--*Economic Opportunity Program*;

(B) Any student financial aid assistance provided by the Bureau of Indian Affairs programs; and

(C) Federal Student Assistance provided under Subchapter IV of Chapter 28 of Title 20--*Higher Education Resources and Student Assistance*, including the following:

*(i)* Federal Pell Grants;

*(ii)* Federal Early Outreach & Student Services Programs:

*(I)* Federal TRIO Programs;

*(II)* Gaining Early Awareness and Readiness for Undergraduate Programs/21st Century Scholar Certificates;

*(III)* Academic Achievement Incentive Scholarships;

*(iii)* Federal Supplemental Educational Opportunity Grants;

*(iv)* Leveraging Educational Assistance Partnership Program;

*(v)* Special Programs for Students Whose Families Are Engaged in Migrant and Seasonal Farmwork;

*(vi)* Robert C. Byrd Honors Scholarship Program;

*(vii)* Child Care Access Means Parents in School;

*(viii)* Learning Anytime Anywhere Partnerships;

*(ix)* Federal Family Education Loan Program;

*(x)* William D. Ford Direct Loan Program; and

*(xi)* Federal Perkins Loans.

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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General Counsel
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## SUBCHAPTER G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE

### 40 TAC §809.101

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.101. Transitional Child 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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### 40 TAC §809.101

The new rule is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rule affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.101. Transitional Child Care.*

(a) A Board shall ensure that transitional child care services will be provided for children of parents who were formerly TANF recipients; and

(1) have been denied temporary cash assistance within the last 30 days and were employed at the time cash assistance was denied; or

(2) have been denied temporary cash assistance within 30 days because of expiration of TANF time limits.

(b) Boards may establish a higher income eligibility limit for transitional child care, provided that the higher income limit does not exceed 85% of state median income for a family of the same size.

(c) Transitional child care shall be available for a period of up to 12 months, depending on income eligibility and whether the person is working, except in the case of a TANF recipient who is eligible for a child caretaker exemption and voluntarily participates in the Choices program. For these individuals, transitional child care is available for a period up to 18 months.

(d) TANF recipients who are not employed when temporary cash assistance expires, including recipients who are engaged in a Choices activity except as provided under subsection (e) of this section, shall receive up to 4 weeks of transitional child care in order to allow these individuals to search for work as needed.

(e) TANF recipients who are engaged in a Choices activity, are meeting the requirements of Chapter 811 of this title (relating to Choices), and are denied temporary cash assistance due to receipt of child support, shall be eligible to receive transitional child care services until the date on which the individual completes the activity, as defined by the Board.

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. CHILDREN OF PARENTS AT RISK OF BECOMING DEPENDENT ON PUBLIC ASSISTANCE

**40 TAC §§809.121 - 809.123**

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.121. Children Living at Low Incomes.*

*§809.122. Children with Disabilities.*

*§809.123. Children of Teen Parents.*

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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**40 TAC §§809.121 - 809.123**

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.121. Children Living at Low Incomes.*

(a) Children living at low incomes are eligible for child care if:

(1) the family income does not exceed the income limit established by the local Board; and

(2) child care is required for the child's parents to participate in training, education or employment activities for a minimum of 30 hours per week, or a higher number of hours per week as established by a local Board; or

(3) the parents of the children are receiving temporary cash assistance or Supplemental Security Income; and

(4) the parents receiving temporary cash assistance have met the Choices requirements as specified in Chapter 811 of this title (relating to Choices), or have been determined by the Board to need child care to comply with those requirements, if the parents are subject to those requirements.

(5) A Board may allow a reduction to the requirement in paragraph (2) of this subsection if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in the activities for the required hours per week.

(b) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week.

*§809.122. Children with Disabilities.*

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Children with disabilities--Individuals who meet the age requirements set forth in this subchapter and who are mentally or physically incapable of caring for themselves and meet the criteria set forth in this section.

(b) Children with disabilities are eligible for child care if residing with parents:

(1) whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the local Board; and

(2) child care is required for the child's parents to participate in training, education or employment activities for a minimum of 30 hours per week, or a higher number of hours per week as established by a local Board.

(3) A Board may allow a reduction to requirement in paragraph (2) of this subsection if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.

(c) For purposes of meeting the education requirements stipulated in subsection (b)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week.

(d) A Board may elect to extend child care services to children with disabilities who are 13 to 19 years of age, provided that the other provisions in this section are also met.

*§809.123. Children of Teen Parents.*

(a) A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(b) A child of a teen may be eligible for child care if:

(1) the teen needs child care services to complete high school or the equivalent; and

(2) the family's total gross income does not exceed the income eligibility limit established by the local Board. Boards may establish a higher income eligibility limit for teen parents, provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

(c) For purposes of determining whether the family's total gross income does not exceed the Board's established income eligibility limit for teen parents, the following applies.

(1) If residing with the teen's parent(s) (the child's grandparent(s)), the teen shall include in the family's total gross income, the income of the child's grandparent(s).

(2) If not residing with the teen's parent(s) (the child's grandparent(s)) the teen is not required to include the grandparents' income in the family's total gross income but must include any monetary contribution received by the teen from the child's grandparent(s).

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. FUNDS MANAGEMENT

### 40 TAC §§809.225, 809.226, 809.231

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.225. Continuity of Care.*

*§809.226. Provider Payments.*

*§809.231. Provider Reimbursement Rates.*

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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### 40 TAC §§809.225, 809.226, 809.231

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.225. Continuity of Care.*

(a) General Principle. Enrolled children, including children whose eligibility for transitional child care has expired, shall receive child care as long as the family remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.

(b) Exceptions. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for one or more of the following types of priority child care:

(1) Choices Child Care under §809.102 of this chapter;

(2) Transitional Child Care under §809.101 of this chapter; or

(3) Workforce Orientation Applicant Child Care under §809.103 of this chapter.

(c) Former Texas Department of Protective and Regulatory Services (TDPRS) children as referenced in §809.105(b)(1) of this chapter (relating to Children Receiving or Needing Protective Services) shall also continue receiving child care funded through the Commission for the period chosen by TDPRS, which shall not exceed six months, so long as it does not result in another child being removed from care.

(d) Former TDPRS children as referenced in §809.105(b)(2) of this chapter may continue receiving child care funded through the Commission if it does not result in removing another child from care.

*§809.226. Provider Payments.*

A Board shall ensure that providers are reimbursed for child care according to the procedures and time frames specified in the Agency-Board Agreement, the Provider Agreements, and as may be specified in the Commission's Grants and Contracts Manual.

*§809.231. Provider Reimbursement Rates.*

(a) Based on local factors, including a market rate survey provided by the Agency, a Board shall establish the reimbursement rates for purchased child care to ensure that the rates provide equal access to child care services in the local market and in a manner consistent with state and federal statutes and regulations governing child care.

(b) A Board shall reimburse providers at the Board's maximum rate or the provider's published rate, whichever is lower.

(c) A Board shall establish the same maximum reimbursement rate for all regulated providers, with or without signed agreements, for each category of care.

(d) A Board shall establish a graduated reimbursement rate for Texas Rising Star Providers (formerly known as Designated Vendors), pursuant to Texas Government Code §2308.315. The minimum reimbursement rate for Texas Rising Star Providers shall be at least five percent greater than the maximum rate established for non-Texas Rising Star Providers for the same category of care up to, but not to exceed the provider's published rate. The Texas Rising Star Provider rate differential established in this section shall be funded with federal Child Care and Development funds dedicated to quality improvement activities.

(e) The Board or its contractor shall not reimburse a provider retroactively for new reimbursement rates.

(f) A Board or its contractor shall ensure that providers who are reimbursed for additional staff needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age.

(1) The higher rate, which may be called an inclusion assistance rate, is an increased provider reimbursement rate to provide for additional staff to assist in the care of a child with disabilities, which shall take into consideration the estimated cost of the additional staff needed by a child with disabilities.

(2) The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the inclusion assistance rate.

(g) A Board may provide incentives to providers and self-arranged child care providers to recognize quality in addition to the provisions set forth in subsection (d) of this section.

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 October 16, 2003.

TRD-200306849
John Moore
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: November 30, 2003
For further information, please call: (512) 463-2573

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## SUBCHAPTER M. APPEAL PROCEDURE

### 40 TAC §809.271

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.271. Child Care During Appeal.*

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 October 16, 2003.

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John Moore
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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### 40 TAC §809.271

The new rule is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rule affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.271. Child Care During Appeal.*

(a) A Board shall ensure that child care continues during the appeal process until a decision is reached, if the parent requests a hearing.

(b) A Board shall ensure that child care does not continue during the appeal process if the child's enrollment is denied, delayed, reduced, or terminated because of:

(1) excessive absences;

(2) voluntary withdrawal from child care;

(3) change in federal or state laws or regulations;

(4) lack of funding due to increases in the number of enrolled children in State and Board priority groups;

(5) a sanctions recommendation against the parent participating in the Choices program;

(6) voluntary withdrawal of a parent from the Choices program;

(7) non-payment of parent fees; or

(8) a parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized child care.

(c) The cost of providing services during the appeal process is subject to recovery from the parent by the Board, if the appeal decision is rendered against the parent.

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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John Moore
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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## SUBCHAPTER N. CORRECTIVE AND ADVERSE ACTIONS

### 40 TAC §809.283

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.283. Corrective and Adverse Action.*

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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John Moore
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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### 40 TAC §809.283

The new rule is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rule affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.283. Corrective and Adverse Action.*

(a) Corrective and adverse action (corrective action) may include sanctions set forth in Chapter 800, Subchapter E of this title (relating to Sanctions) and may include, but not be limited to, the following:

(1) requirement that the Board's contractor enter into a Service Improvement Agreement (SIA);

(2) suspension, nonrenewal, or termination of the enrollment agreement, Provider Agreement, contract for service delivery, other Board subcontracts, or the Board contract;

(3) temporarily withholding of payments;

(4) nonpayment of costs incurred; and

(5) recoupment of funds.

(b) When determining which corrective actions are appropriate, the following shall be considered:

(1) the scope of the violation;

(2) the severity of the violation;

(3) the compliance history of the person or entity; and

(4) in the case of contractors, the contractor's failure to meet Commission performance standards.

(c) Corrective action may include, but is not limited to, the following:

(1) closing intake;

(2) moving children to another provider facility selected by the parent;

(3) holding provider payments; and

(4) terminating, suspending, or not renewing a Provider Agreement if the Texas Department of Protective and Regulatory Services has cited a provider for serious or continued noncompliance with the minimum licensing standards or placed the provider on some form of corrective or adverse action.

(d) When a Board's contractor or provider violates a contract or agreement, a written SIA may be negotiated between the Commission, Board, Board's contractor, or provider. At the least, the SIA shall include, the following:

(1) the basis for the improvement agreement;

(2) the steps required to reach compliance including, if applicable, technical assistance;

(3) the time limits for implementing the improvements; and

(4) the consequences of noncompliance with the agreement.

(e) Failure to fully comply with the terms of the SIA may result in the imposition of one or more of the sanctions set forth in subsection (a) of this section and Chapter 800, Subchapter E of this title.

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 October 16, 2003.

TRD-200306851
John Moore
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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## SUBCHAPTER O. CHILD CARE TRAIN OUR TEACHERS (TOT) AWARD

### 40 TAC §§809.301 - 809.304, 809.311 - 809.314, 809.331, 809.332

*(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with

the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

*§809.301. Scope and Purpose.*

*§809.302. Definitions.*

*§809.303. Eligibility.*

*§809.304. Uses of the Award.*

*§809.311. Award Administration.*

*§809.312. Award Payments.*

*§809.313. Procedure for Requesting Awards.*

*§809.314. Procedure for Application Evaluation.*

*§809.331. Recipient Responsibilities.*

*§809.332. Sanctions for Non-Compliance.*

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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John Moore
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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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 1. ADMINISTRATION

### PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

### CHAPTER 111. EXECUTIVE ADMINISTRATION DIVISION

### SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

**1 TAC §111.14**

The Texas Building and Procurement Commission has withdrawn from consideration the proposed amendments to §111.14 which appeared in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3185).

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

TRD-200306852
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Effective date: October 16, 2003
For further information, please call: (512) 463-4257

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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 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

### CHAPTER 125. SUPPORT SERVICES DIVISION--TRAVEL AND VEHICLE

### SUBCHAPTER A. TRAVEL MANAGEMENT SERVICES

**1 TAC §§125.1, 125.3, 125.5, 125.7, 125.9, 125.11, 125.15, 125.17, 125.19, 125.29**

The Texas Building and Procurement Commission (TBPC) adopts amendments to 1 TAC Chapter 125, Subchapter A, §§125.1, 125.5, 125.7, 125.9, 125.11, 125.15, 125.17, 125.19, and 125.29 concerning the agency's Travel Management Services without changes in the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7526). The text will not be republished. Section 125.3 is adopted with nonsubstantive changes to correct the definition of the commission as found in paragraph (9) and the text will be republished.

The amendments provide TBPC with greater flexibility in the acquisition of travel services that are in the best interest of the State. The amendments also allow officers and employees of public junior colleges and school districts as well as municipal officers and employees to use TBPC travel services contracts when on official business. The amendments are necessary to implement the provisions of HB 3042, HB 898 and HB 1061. Additionally, the amendments eliminate outdated and unnecessary language related to various travel program procedures and requirements.

The amendments to §125.1 are justified in that they add officers and employees of public junior colleges and public school districts to participate in TBPC travel services contracts pursuant to HB 898, and add municipal officers and employees pursuant to HB 1061. The amendments also delete references to the State Travel Management Program, which has been merged into the Procurement Division.

The amendments to §125.3 are justified in that they revise definitions relating to travel management services to replace references to the General Services Commission with the Texas Building and Procurement Commission pursuant to §2151.002 of the Texas Government Code; define official municipal business travel and participating municipality for the purposes of HB 1061; define official/participating public junior college and official/participating school district travel for the purposes of HB 898; amend TBPC rules on travel management services to include references to these entities in documentation and recordkeeping requirements; and renumber the definition sections to reflect additional definitions.

The amendments to §125.5 are justified in that, with regard to available travel services, they delete references to the State Travel Management Program, which has been merged into the Procurement Division; they add municipality, county, public junior college and school district to the entities who may utilize corporate travel charge card services pursuant to HB 898 and HB 1061; and they delete group/meeting planning services from the services TBPC provides to state agencies, as it was not statutorily required and the need for the service has become superfluous.

The amendments to §125.7 are justified in that, with regard to travel agency services, they clarify the entities to which travel agency services are available pursuant to HB 898, HB 1061, and HB 3042; and delete language indicating that TBPC must enter into travel agency service contracts with multiple travel agencies pursuant to HB 3042.

The amendments to §125.9 are justified in that they add officers and employees of public junior colleges and public school districts to participate in corporate travel charge card services and identify whom TBPC may bill for official business travel charges pursuant to HB 898 and HB 1061.

The amendments to §125.11 are justified in that they add officers and employees of public junior colleges and public school districts to participate in TBPC negotiated rate services for official business travel pursuant to HB 898, and the municipal officers and employees pursuant to HB 1061.

The amendments to §125.15 are justified in that they delete references the State Travel Management Program and the Support Services Division, which has been merged into the Procurement Division.

The amendments §125.17 are justified in that they delete a requirement that commission solicit bids for travel services on the Texas Electronic Business Daily, and replaced the language with that indicating bid solicitation shall be done in accordance with agency practice and procedures, which incorporates the Texas Electronic Business Daily into the bid process.

The amendments §125.19 are justified in that they clarify that state agency participation is administered through the State Travel Services Program, rather than the Support Services Division; and permits state agencies to use alternative methods of travel if reservations can be secured through a different source that results in a lower overall cost to the state.

The amendments §125.29 are justified in that they add officers and employees of public junior colleges and public school districts who are engaged in official business to the list of those

who may participate in TBPC travel services contracts pursuant to HB 898 and specifies that public junior college/school district participation fees shall be deposited to the credit of that particular account in the general revenue fund that is appropriated only for the purposes of junior college/school district travel programs; specifies that school district participation fees shall be deposited to the credit of that particular account in the general revenue fund that is appropriated only for the purposes of the junior college/school district travel programs, and provides identical language relating to municipal officers and employees pursuant to HB 1061.

The amendments to the rules implement the expanded opportunities for state and local entities to participate in state travel programs under Chapter 2171.

No public comments were received regarding the adoption of the amendments.

The amendments are adopted under the authority of the Texas Government Code, §§2152.003, 2171.002, 2171.052, and 2171.055, which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the sections.

The following code is affected by these rules: Government Code, §§2171.002, 2171.052, and 2171.055.

*§125.3. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accumulated Depreciation--The total amount of vehicle depreciation recorded in the Vehicle Information Program.

(2) Airlines Reporting Corporation (ARC)--The organization of participating airlines which provides a common method of approving travel agency locations for the sale of domestic air transportation.

(3) Alternative Fuel--Compressed natural gas, liquefied natural gas, liquefied petroleum gas, electricity, methanol (or M85), or ethanol (or E85).

(4) Alternative Fuel Vehicle--A motor vehicle capable of using alternative fuel in the original equipment manufactured engine, or in a converted traditional gasoline or diesel engine.

(5) Assigned Vehicle--A state vehicle normally driven by the same employee or small specific group of employees.

(6) Book Value--The capitalized value less the accumulated depreciation.

(7) Capitalized Value--The original cost of a vehicle, plus later adjustments for major additions or improvements.

(8) City Pair--A one-way airline flight between two cities, from origin to destination, regardless of stopovers or connections.

(9) Commission--The Texas Building and Procurement Commission (TBPC).

(10) Computerized Reservations System (CRS)--One of a number of interactive electronic systems linking individual travel agencies to a central airline-owned computer, allowing agents to make availability inquiries and travel reservations.

(11) Corporate Travel Charge Card--A method of payment for travel services.

(12) Depreciation Rate--A uniform mathematical factor which reflects a vehicle's loss of market value due to wear, deterioration, or obsolescence.

(13) Direct Labor--The cost of labor associated with repairing or servicing vehicles, whether performed by a contractor or state employee.

(14) Disposal Date--The date on which a state vehicle is no longer included in a state agency's property inventory.

(15) Downtime--The total number of working hours a state vehicle, otherwise eligible for assignment, is out of service for repair or maintenance.

(16) Driver's Handbook--A reference manual or guide detailing state agency operational policy and procedure for state vehicles.

(17) Facility--A building used for meetings, conventions, conferences, and seminars.

(18) Field Employee--A state employee whose regular duties require work in locations other than agency headquarters or regional offices and who regularly require a vehicle for ongoing daily duties.

(19) Fleet Officer--The individual designated by each state agency who is responsible for the timely and accurate submission of all required information utilized by the vehicle fleet management system.

(20) Gross Vehicle Weight (GVW)--The greatest weight of vehicle and load which the manufacturer recommends that a vehicle accommodate. The GVW includes the total weight of chassis, cab, body, special equipment, oil, water, gasoline, driver, and the maximum payload.

(21) Indirect Labor--The labor cost of vehicle fleet related employees whose time cannot be identified with repairing or servicing individual vehicles.

(22) International Airlines Travel Agent Network (IATAN)--The organization of participating airlines which provides a common method of approving authorized agency locations for the sale of international air transportation.

(23) Negotiated Rate--A price for a travel service negotiated or awarded by the program.

(24) Nonparticipating State Agency--Any state agency that has not submitted a properly completed and approved travel service requisition.

(25) Nonresident Bidder--A person who is not a resident bidder.

(26) Official State Business Travel--The travel undertaken by a state official or employee to conduct official state business or to represent the state in an official capacity.

(27) Official County Business Travel--The travel undertaken by a county officer or employee, including a county sheriff, deputy sheriff, or juvenile probation officer, to conduct official county business or to represent the county in an official capacity.

(28) Official Municipal Business Travel--The travel undertaken by a municipal officer or employee, to conduct official municipal business or to represent the municipality in an official capacity.

(29) Official Public Junior College Business Travel--The travel undertaken by a public junior college officer or employee to conduct official public junior college business or to represent the public junior college in an official capacity.

(30) Official School District Travel--The travel undertaken by a school district officer or employee, to conduct official school district business or to represent the school district in an official capacity.

(31) On-Site Location--A full-service travel agency office located on state property, in accordance with Chapter 2165, Subchapter E of the Government Code that processes travel reservations for high-volume state agencies.

(32) OVFM--Office of Vehicle Fleet Management.

(33) Participating County--A county that has submitted the documentation required by TBPC to participate in State travel services contracts.

(34) Participating Municipality--A municipality that has submitted the documentation required by TBPC to participate in State travel services contracts.

(35) Participating Public Junior College--A public junior college that has submitted the documentation required by TBPC to participate in State travel services contracts.

(36) Participating School District--A school district that has submitted the documentation required by TBPC to participate in State travel services contracts.

(37) Participating State Agency--A state agency that has submitted the documentation required by TBPC to participate in State travel services contracts.

(38) Passenger Name Record (PNR)--A record in a computer reservation system that contains all travel arrangements and information for a particular trip for a specific traveler.

(39) Pool Vehicle--A vehicle normally garaged in a central location for use by any authorized employee of the state agency.

(40) Program--The State Travel Management Program.

(41) Proposal--The response made by a travel vendor to provide goods or services in accordance with the terms and conditions of an issued request for proposal.

(42) Proposal Evaluation Team--The group of individuals selected by the program to evaluate proposals made in response to an issued request for proposal.

(43) Rental Car--A vehicle not owned by the State of Texas and rented from a rental car vendor.

(44) Request For Proposal--An official solicitation to receive proposals from competitive sources in accordance with specific terms and conditions contained in the solicitation documents.

(45) Resident Bidder--A person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

(46) Revenue Sharing--A percentage of revenue received by the state from contract travel vendors.

(47) Salvage Value--The amount expected to be realized from the disposal of a vehicle at the conclusion of its useful life.

(48) Satellite Ticket Printer (STP) Location--A location at which travel documents are printed by means of a ticket printing device.

(49) Special Purpose Vehicle (SPV)--A motor vehicle commercially designed to be used primarily for purposes other than to provide transportation service for personnel, supplies, or equipment.

(50) Standard Labor Rate (SLR)--A rate computed to approximate the total hourly cost of salaries and related fringe benefits.

(51) State agency--

(A) any department, commission, board, office, council, or other agency in the executive branch of state government created by the constitution or by a statute of this state;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Judicial Council;

(C) an institution of higher education as defined in the Texas Education Code, §61.003;

(52) State Employee--A person employed by a state agency, or an elected or appointed state official.

(53) State Vehicle--Any state-owned vehicle which is propelled by a self-contained engine and is licensed to operate on public highways.

(54) Texas State Travel Directory--The directory distributed by the program which lists travel guidelines, contract travel vendors and negotiated rates. All or part of the Texas State Travel Directory and updates are accessible on TBPC's web site.

(55) Transfer Date--The date a vehicle is transferred from one state agency to another.

(56) Transition--A designated period of time that a terminated contract travel vendor agency or travel agent provides travel services until a successor is selected and performing services as required by TBPC's contract.

(57) Travel Agency--Any individual, corporation, association, partnership, company, or firm designated as an appointed airline industry agent by the Airlines Reporting Corporation or the International Airlines Travel Agent Network, an airline, or a company, corporation, association, partnership, or firm owned by an airline or group of airlines which provides travel reservations and ticketing services.

(58) Travel Agency Services Contract--Terms and conditions established by TBPC's State Travel Management Program to ensure travel agencies meet minimum requirements to provide travel services for the State of Texas.

(59) Travel Service Requisition--The form and/or process developed by the program for state agencies, municipalities, counties, public junior colleges, and school districts to request services provided by the State Travel Management Program.

(60) Travel Status--When a state employee conducts official state business for which travel expenses may be eligible for reimbursement in accordance with the Comptroller of Public Accounts State of Texas Travel Allowance Guide.

(61) Travel Vendor--A provider of any travel or transportation service.

(62) Traveler--A person who is eligible to use the program's contract services and negotiated rates.

(63) Vehicle Fleet Management System--A computerized data retrieval system to assist each state agency in the management of its vehicle fleet.

(64) Vehicle Inventory--A list of state agency vehicles by type and class which is utilized to determine their average cost of operation.

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 October 16, 2003.

TRD-200306853
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Effective date: November 5, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 463-4257

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**1 TAC §125.13, §125.27**

The Texas Building and Procurement Commission (TBPC) adopts repeals of 1 TAC Chapter 125, Subchapter A, §125.13 and §125.27 concerning the agency's Travel Management Services without changes as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7533).

The repeal of §125.13 eliminates the requirement for the TBPC to provide group meeting planning services to other state agencies. TBPC is not required by statute to provide group meeting planning services. It has been determined by TBPC that these services are minimally used and do not provide a cost-benefit to the State.

Repeal of §125.27 eliminates an obsolete contracting service, thereby conforming the agency rules with TBPC's travel service contracting authority under Texas Government Code, §2171.052, as amended by HB 3042.

The repeal will provide TBPC with more efficient use of staff.

No public comments were received regarding the repeal of the rules.

The adoption of the repeals is authorized by the Texas Government Code, §§2152.003, 2171.002, 2171.052 and 2171.055.

The following statutes are affected by these rules: Texas Government Code, §§2152.03, 2171.002, 2171.051, 2171.052 and 2171.055.

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-200306854
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
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For further information, please call: (512) 463-4257

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## SUBCHAPTER B. STATE VEHICLE FLEET MANAGEMENT

**1 TAC §§125.41, 125.43, 125.45**

The Texas Building and Procurement Commission adopts amendments to 1 TAC §§125.41, 125.43, and 125.45 concerning vehicle fleet maintenance services and the name of the commission without changes in the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7533). The text will not be republished.

The amendments change the name of the agency from General Services Commission to Texas Building and Procurement Commission, and correct the website address.

The amendments remove the requirement that the Texas Building and Procurement Commission provide vehicle fleet maintenance services to agencies in Travis County and allow the agency to provide these services at its discretion, through the Office of Vehicle Fleet Management.

The amendments also remove the responsibility for TBPC's fleet management from the Office of Vehicle Fleet Management (OVFM). This amendment corrects the existing rule to reflect the current practice that the appropriate TBPC personnel, not the OVFM, provide the day to day management of the agency's fleet of vehicles. The amendments place the responsibility for the "Vehicle Fleet Management System" with the OVFM, change the data reporting period from twice annually to a monthly basis, and align examples of required data items with the State Vehicle Management Plan. These amendments are a result of statutory changes made to Chapter 2171 by HB 3042 and §2151.003 of the Texas Government Code.

The rules clarify the agency name and provide more efficient services within the agency. Section 125.45 changes a reporting period pursuant to HB 3042.

No public comments were received on the amendments.

The amendments are adopted under the authority of the Texas Government Code, §2152.003 and §2171.002.

The following code is affected by these rules: Government Code, Title 10, Subtitle D, Chapter 2171.

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 October 16, 2003.

TRD-200306855
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Effective date: November 5, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 463-4257

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**1 TAC §125.47**

The Texas Building and Procurement Commission adopts the repeal of Title 1, Texas Administrative Code, §125.47 concerning vehicle fleet maintenance service without change as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7535). The repeal of this rule is necessary as the Texas Building and Procurement Commission is no longer required to provide

the services described therein because of amendments to Texas Government Code §2171.102 contained in HB 3042.

The repeal of §125.47 eliminates the requirement for TBPC to provide vehicle fleet maintenance to state agencies.

No public comments were received.

The repeal is adopted under the authority of the Texas Government Code, §2152.003 and §2171.002.

The following code is affected by these rules: Government Code, Title 10, Subtitle D, Chapter 2171.

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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 354. MEDICAID HEALTH SERVICES

## SUBCHAPTER A. PURCHASED HEALTH SERVICES

## DIVISION 9. AMBULANCE SERVICES

### 1 TAC §354.1113

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §354.1113, concerning charges for ambulance services, without changes to the proposed text as published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4029) and will not be republished.

This rule is amended to comply with the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996. HIPAA requires that ambulance services be reimbursed for both base rates and mileage rates. Currently, ground ambulance services are reimbursed by either a flat rate or a base rate plus a mileage rate. The current flat rate is a total charge for service, regardless of mileage. In order to conform to the federal requirement, HHSC is deleting the "flat" rate option and replacing it with "a base" rate, to which the mileage rate may be added. The revisions also update internal references to other sections of the *Texas Administrative Code* and replace references to the "Texas Department of Health" and to the "department" with references to "Health and Human Services Commission (HHSC) or its designee," where appropriate.

The amendment is justified because it complies with federal requirements.

No comments were received during the 30-day comment period or the June 17, 2003, public hearing regarding the adoption of the amendment.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; 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.

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 October 20, 2003.

TRD-200306903
Steve Aragón
General Counsel
Texas Health and Human Services Commission
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Proposal publication date: May 23, 2003
For further information, please call: (512) 424-6576

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## CHAPTER 363. COMPREHENSIVE CARE PROGRAM

## SUBCHAPTER E. EPSDT EYEGLASS PROGRAM

### 1 TAC §§363.502 - 363.504

The Health and Human Services Commission (HHSC) adopts amendments to §363.502, Benefits and Limitations, and §363.504, Claims Information Requirements, with changes to the proposed text as published in the May 9, 2003, issue of the *Texas Register* (28 TexReg 3786). The text of the rules will be republished. Section 363.503, Specifications for Eyewear, is adopted without changes to the proposed text as published in the May 9, 2003, issue of the *Texas Register* (28 TexReg 3786) and will not be republished.

The purpose of the amendment to §363.503 is to make eyewear frames available to Medicaid beneficiaries ages 6 months to 21 years in metal and in a combination of metal and zylonite. As amended, §363.503 would also make available polycarbonate plastic lens, as prescribed by a vision professional, and require that Medicaid providers offer beneficiaries six styles of frames (at least one style of each type of frame material) in a choice of three colors for each frame style. The amendments to §363.502 and §363.504 delete the requirement that claim forms for plastic lenses include a justification of medical necessity. Amendments to §363.502 and §363.504 also update Texas Administrative Code chapter and section references in the rules. The amendments were suggested during meetings with professional associations of eyewear providers and will bring Medicaid beneficiaries' eyewear choices in line with current market practices.

The amendments are justified because they provide more comprehensive vision care benefits for Medicaid clients.

No comments were received during the 30-day comment period regarding the adoption of the amendments. HHSC did receive a

comment from the Texas Optometric Association, Inc. dated August 22, 2003. The Texas Optometric Association suggests that "Optometrist Services" be changed to "Vision Services." HHSC agrees with this suggestion and revised the wording to §363.502 and §363.503.

The amendments are adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; 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.

*§363.502. Benefits and Limitations.*

In addition to the services specified in §354.1023 of this title (relating to Optometrist Services), the benefits and limitations applicable to vision services available through the Medicaid EPSDT Program are as follows.

(1) Recipient eligibility. All Medicaid recipients under the age of 21 are eligible for EPSDT vision services. Services may be continued through the month the eligible recipient becomes 21.

(2) Provider eligibility. All vision 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 is provided.

(3) Reimbursable services.

(A) Examination. One examination of the eyes by refraction may be provided to each eligible recipient each state fiscal year (September 1-August 31).

(B) Eyewear. Eyewear that is medically necessary to correct vision defects may be provided to an eligible recipient. Eyewear include eyeglasses (lenses and frames), contact lenses, and post cataract surgery prosthetic lenses.

*(i)* Nonprosthetic eyeglasses or contact lenses are available to an eligible recipient only once every 24 months, unless the recipient's visual acuity has changed by .5 diopters or more, or the eyewear is lost or destroyed. The Texas Health and Human Services Commission or its designee must authorize in writing prescriptions for contact lenses before dispensing. Prior authorization is based on the provider's written documentation that contact lenses are the only means of correcting the vision defect.

*(ii)* Prosthetic eyewear is provided to an eligible recipient if prescribed for post cataract 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 post cataract surgery convalescence (four months after the date of surgery).

*(II)* Only one pair of permanent prosthetic eyewear may be dispensed except to replace lost or destroyed prosthetic eyewear or if required because of a change in visual acuity of .5 diopters or more.

(C) Repairs. Eyeglass repairs are reimbursable if the cost of materials exceeds $2.00. Repairs costing less are not reimbursable and the provider may not bill the recipient for these repairs.

(D) Replacement of lost or destroyed eyewear. Replacement of eyewear is reimbursable. The date nonprosthetic eyewear is replaced begins a new 24-month ineligibility period for new eyewear unless the conditions in subparagraph (B)(i) of this paragraph apply.

(E) Limitations. Eyeglasses for residents of institutions that include this service in their vendor payment are not reimbursed under this program.

*§363.504. Claims Information Requirements.*

Providers must meet the criteria established in this subchapter for vision services and the provisions for participation in the Medicaid Program established under Chapter 354, Subchapter A, Division 1, of this title (relating to Medicaid Procedures for Providers), and Chapter 354, Subchapter A, Division 11, of this title (relating to General Administration). Besides the claims information requirements established in §354.1001 of this title (relating to Claim Information Requirements), the following information is required for claims for vision 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 verifying the diopter change required for the dispensing of eyeglasses;

(4) certification by the provider that the dispensed materials used for repairs meet the specifications for eyewear in §363.503 of this title (relating to Specifications for Eyewear);

(5) claims for eyewear with special features, signed by the recipient, acknowledging selection of eyewear that is beyond the specifications for eyewear in §363.503 of this title (relating to Specifications for Eyewear). A signed patient certification satisfies this requirement for claims the provider submitted electronically;

(6) a copy of the invoice for supplies dispensed, attached to a claim for repairs or kept the provider, as authorized by the department or its designee;

(7) if the claim is for replacement of prosthetic eyewear or of nonprosthetic eyewear when the records of HHSC or its designee show that less than 24 months have elapsed since the date of the original nonprosthetic eyewear service, then:

(A) submission of a statement justifying the need for the replacement eyewear (reimbursement is made only if the eyewear was lost or damaged beyond repair or if the recipient's visual acuity has changed significantly, as specified in §363.502(3)(B)(i) or (ii)(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 a patient certification if the provider submits claims electronically; and

(B) claim form signed by the recipient if the original eyewear was lost or damaged beyond repair.

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 October 15, 2003.

TRD-200306782
Steve Aragón
General Counsel
Texas Health and Human Services Commission
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# TITLE 16. ECONOMIC REGULATION

## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 22. PRACTICE AND PROCEDURE
### SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

**16 TAC §22.252**

The Public Utility Commission of Texas (commission) adopts new §22.252, relating to Procedures for Approval of ERCOT Fees and Rates, with changes to the proposed text as published in the August 8, 2003 edition of the *Texas Register* (28 TexReg 6171). The new section establishes the appropriate procedures parties shall follow in a proceeding related to the fees and rates charged by the Electric Reliability Council of Texas (ERCOT). Procedures for conducting a review of an ERCOT fee change have been developed by the commission on an *ad hoc* basis in prior cases. Based upon its experience in those cases, the commission decided to standardize the procedure it will use to review the reasonableness and sufficiency of ERCOT's fees. By standardizing the commission's procedures, the new rule will make commission oversight of ERCOT and the review of its fees more effective and efficient and facilitate participation by interested persons in reviewing ERCOT's fees. The commission finds that these rules support the public interest by providing greater regulatory certainty, increasing the efficiency of the commission's review process and helping to maintain reasonable fees for ERCOT's services. The new section is adopted under Project Number 27736.

In addition, the commission, under a separate order, also adopts the following substantive rules in Chapter 25 of this title (relating to Substantive Rules Applicable to Electric Service Providers): an amendment to substantive rule §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance) and new substantive rule §25.363 of this title (relating to ERCOT Fees and Other Rates) concerning the expense components included in ERCOT's fees and rates and ERCOT reporting requirements. The new substantive rule and amended substantive rule are being published separately but were adopted as part of Project Number 27736.

The commission staff conducted a public hearing on the proposed new section on September 10, 2003. Although public comment was invited, no person provided comments at the public hearing.

The commission received written comments on the proposed section on August 29, 2003 from Reliant Resources, Inc. (RRI) and ERCOT. Reply comments were submitted by ERCOT. All comments, including any not specifically referenced herein, have been fully considered by the commission. The commission has made other minor modifications for the purpose of clarifying its intent and for format and grammatical purposes.

*§22.252(b), Interim approval*

RRI commented that the general purpose of this subsection is to grant ERCOT the right to seek interim approval of a change to its rates or fees for good cause while an application for a change in rates or fees is pending. RRI objected to the portion of the proposed rule that gives the commission the authority to determine whether or not to order a refund of an interim rate if the refund would harm ERCOT's ability to perform its functions. RRI stated that refunds for interim rates subsequently found unreasonable after full hearing should be the rule, not the exception. Therefore, RRI proposed that the following language should be deleted: *"unless a refund would harm ERCOT's ability to efficiently perform its required functions."* ERCOT urged the commission to reject RRI's comments. ERCOT noted that the commission has the discretion to determine whether or not refunds of interim rates will be required. ERCOT argued that it is a non-profit corporation that relies upon its fees as its only source of revenue. Requiring a refund could affect its ability to perform its required functions.

*Commission response*

In response to RRI's comments, the commission agrees that refunds for interim rates found unreasonable should be the rule, so that the ratepayers are not responsible for paying unreasonable costs incurred by ERCOT. However, the commission also recognizes that ERCOT is dependent upon its fee structure for the operating funds necessary to perform its required functions. The commission believes that the best way to balance these two competing considerations is to retain the discretion to determine whether or not refunds are appropriate in any particular circumstance. Accordingly, the commission declines to make the change suggested by RRI.

*Procedural timeline*

As discussed later, ERCOT objected to the entire procedural timeline related to its fee requests and instead proposed a more expedited procedure. As a part of that suggestion, ERCOT proposed eliminating the interim fee provisions contained in §22.252(b).

*Commission response*

The commission declines to adopt ERCOT's expedited schedule, for reasons discussed under §22.252(f). The commission believes that the ability to request interim rates is an important part of its procedure; therefore, it rejects ERCOT's suggestion and retains the interim rate provisions as originally proposed.

*§22.252(f), Schedule*

In comments directed to this subsection and subsection (g), ERCOT objected to the overall schedule for processing of its applications. It proposed that this subsection be amended to allow it to file an application within 60 days of the proposed effective date rather than 120 days as specified in the proposed rule. ERCOT argued that a shorter time period is needed in order to allow it to fund its operations in a planned and orderly manner. ERCOT asserted that forcing it to use "outdated" information could cause it to seek higher fees or more frequent fee changes. ERCOT also noted that it is a non-profit corporation and that any shortage in its revenue would require it to reduce spending or borrow funds to meet its needs. Because of this, ERCOT argued that the commission "should err on the side of allowing ERCOT to implement fee change requests promptly rather than waiting for all issues to be decided." ERCOT stated that its fee requests are not "rocket science," that its internal fee budget process is open and subject to input from affected entities before it is adopted and that these factors support a shorter review period. Finally, ERCOT indicated that its proposed 60-day time period for review is consistent with its internal financial policy for its budget, consistent with the review time for independent system operator (ISO) fee requests at the Federal Energy Regulatory Commission (FERC),

and longer than the 35-day review period for public utilities under PURA.

*Commission response*

Given the various interests of all the parties involved, the commission has crafted a rule that balances the concerns expressed by ERCOT with the need for an adequate and thorough review, in which interested parties have a reasonable opportunity to participate. The time periods in the proposed rule were intended to provide for a prompt, reasonable, and predictable review of any proposed changes in ERCOT's fees and rates. Under the rule as proposed, ERCOT has the option of requesting interim rates within 60 days if it files a request the same day it files its application for a change in fees. While the application is being further reviewed by the commission, modified rates can go into effect after 60 days if ERCOT receives interim approval. Thus, the commission finds that ERCOT has the ability, under the rule, to obtain approval to implement its new rates within 60 days as it has requested, albeit on an interim basis.

The 120-day time frame for normal review gives interested persons an opportunity to review ERCOT's request and conduct discovery as needed to determine if the fee request is reasonable. The 120-day time limit is shorter than is usually applicable in major rate cases involving utilities, including some utilities that have revenues similar in magnitude to those of ERCOT. Moreover, as ERCOT admits, its revenues "continue to remain in a period of flux because of the continued expansion in scope of ERCOT's operations and because of ERCOT's increased understanding of what is required to implement its responsibilities." The continued flux in both ERCOT's operations and its budget have raised concerns about the level of fee being charged. In order to have sufficient time to review those concerns, the 60-day time period proposed by ERCOT is simply too short. The commission, therefore, finds that the 120-day time frame contained in the rule is appropriate.

The commission disagrees with ERCOT's assertion that it should "err on the side of allowing ERCOT to implement fee change requests promptly rather than waiting for all issues to be decided." ERCOT bears the burden of proving the reasonableness of its request. Unless that burden is met and the issues are decided, the fee, which is charged to market participants but ultimately borne by consumers, should not be finally approved by the commission. The commission believes that it should err on the side of assuring reasonable and nondiscriminatory rates for all rather than merely acquiescing to one party's desire for expediency.

The commission disagrees with ERCOT's assertion that the proposed schedule will somehow cause it to use "outdated" information in its fee request. ERCOT seems to assert that information it uses for preparing a fee request with a 60-day effective date would be "fresh," while information presented for a 120-day effective date would be stale. This is a situation that is not uncommon in any rate change considered by the commission. The commission agrees that forecasts used to project the costs of ERCOT's functions that go into the rate calculation could change in a 60-day time period. If that occurs, ERCOT has the option of filing an amendment to its package to reflect such changes. The need for, and reasonableness of, those changes could then be reviewed by the commission. The possibility of changes occurring during the review period does not justify reducing the time period necessary for the commission review, particularly when ERCOT has the ability to obtain interim approval of its proposed rate changes.

The commission recognizes that ERCOT uses an open process in developing its budget and allows input from other parties. This open budget process will probably help to reduce the number of issues that are contested in any ERCOT fee application and the commission has considered that possibility in reducing the review time period to 120 days. However, the open budget process is not a substitute for the review that the commission conducts under PURA. The commission must make an independent determination that the resulting fees and rates are reasonable and non-discriminatory. It cannot delegate that statutory authority to the ERCOT Board.

The commission also disagrees with ERCOT's characterization of the time frame applicable to utility rate changes. Although PURA allows for a 35-day effective date for utility rate changes, PURA §36.105 also *requires* a public hearing, and a correspondingly longer time period for approval, in every case in which the change constitutes a "major change." The changes proposed by ERCOT would, in probably all instances, constitute "major changes" and would not qualify for the shorter 35-day effective date contained in PURA §36.102. Further, PURA §36.108 authorizes the commission to suspend the rate change for 150 days after the proposed effective date or a date 185 days after the application was filed. Finally, the fact that the 120-day review period is longer than that used in ERCOT's Financial Policy and longer than the period used by the FERC in reviewing ISO charges does not bind the commission. The procedures and schedules adopted by those parties are designed to meet their requirements and do not establish the time frames needed by this commission to meet its statutory obligations. The commission believes the 120-day time period specified in the rule strikes a reasonable balance between ERCOT's desire for an expedited proceeding and the need for thorough review by interested persons and the commission.

The commission also notes that the 120-day time limit does not preclude the commission from approving a change in rates before 120 days has elapsed from the time of the filing. It merely requires ERCOT to file its request 120 days before the proposed effective date. If the commission is satisfied that the application is sufficient and reasonable before 120 days has elapsed, it can approve the application at that time. Conversely, if more time is needed for review, the commission can extend the time period. The rule dictates that the normal time period for approval should be 120 days but also allows the commission to tailor the schedule as circumstances warrant. The commission believes that the rule as written provides a reasonable standard, while also allowing for early or late contingencies that may arise that could reduce or extend the time frame needed for review. Accordingly, the commission declines to shorten the time period for review as proposed by ERCOT.

*§22.252(g), Processing of the application*

*Paragraph (1)*

RRI commented that the commission has the authority to determine on its own whether to hear a case or refer it to the State Office of Administrative Hearings (SOAH), whether or not there is a request; therefore, the language indicating that the commission may resolve an issue based upon briefing, *"if requested"* should be deleted. ERCOT replied to RRI's comment indicating that the language was unclear. ERCOT read the rule as indicating that briefing would be allowed if requested by the commission, rather than only in response to a request from a party.

*Commission response*

The commission agrees that it has the authority to determine whether a matter should be resolved by briefing or through an evidentiary proceeding. The rule language was intended to indicate that briefing would only be allowed if requested by the commission. The language was not intended to limit the commission's ability to act to only those instances when a request was made by a party. In order to clarify the rule, the commission is revising the language as suggested by ERCOT, to indicate that briefing will be allowed "if briefing is requested by the commission."

*Paragraph (2)*

RRI recommended that subsection (g)(2) be clarified to reflect the language in PURA §14.053 which provides that SOAH *shall* conduct hearings in a contested case in the event one or more of the commissioners does not do so.

*Commission response*

The commission agrees and has made the change suggested by RRI.

*Paragraph (3)*

ERCOT expressed its appreciation of the commission's efforts to include constraints on the time to review a request for a fee change, but stated that the language should be modified to add language that requires the commission to determine whether a refund would harm ERCOT's ability to efficiently perform its required functions. In addition, ERCOT averred that it would be fair to require that the commission find good cause before allowing the 120-day deadline to be postponed.

*Commission response*

The commission declines both suggestions. Implicit in its analysis of any requested rate change is the fact that the commission will not approve any rate or fee that would harm ERCOT's ability to efficiently perform its required functions. Subsection (b) of the rule already indicates that any interim rate is subject to refund "unless a refund would harm ERCOT's ability to efficiently perform its required functions." There is no need to repeat the language of subsection (b) in subsection (g)(3). As noted previously, the commission believes that the best way to balance the competing interests of ERCOT and customers is to retain the discretion to determine whether or not refunds are appropriate in any particular circumstance. The commission also declines ERCOT's suggestions to make the 120 days a firm deadline or make an extension of the deadline subject to a good cause requirement. As noted previously, the rule provides a flexible schedule that allows the commission to respond to the circumstances presented. Adding the language proposed by ERCOT significantly limits the commission's ability to extend the time frame if additional time is needed to adequately review ERCOT's fee request. The rule as adopted allows ERCOT to obtain interim rates before 120 days elapse, so ERCOT's ability to adequately perform its functions should not be affected by a commission schedule that extends beyond the 120th day.

*Emergency fee change*

ERCOT suggested a final portion be added to §22.252 that would create a procedure to allow for fees to be changed on an emergency basis. ERCOT opined that such a procedure would allow it to obtain timely relief in the unlikely event a significant revenue shortfall occurs that threatens its economic viability. ERCOT proposed that it be allowed to implement such emergency fee changes 30 days after the filing of an application and that it be limited to only one such request per year. The emergency fee would go into effect unless the commission determined that it was not necessary.

*Commission response*

The commission declines to add the provision sought by ERCOT. The proposed language seems to change the burden of proof applicable to fee change applications, requiring approval unless the commission acts to prohibit such change, rather than prohibiting a fee change unless the commission approves the fee change. The commission also notes that the rule as adopted allows interim rates to be effective 60 days after the filing of an application. ERCOT has not shown what emergencies it is attempting to address or demonstrated that it does not have other means of addressing such emergencies, such as through a short-term borrowing. In the absence of this information, the commission sees no need to create a special procedure that effectively prevents meaningful participation by other parties in reviewing ERCOT's application for a change. In short, ERCOT has failed to demonstrate the need for a provision allowing fee changes on an emergency basis.

This new section is adopted 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, PURA §39.151 which grants the commission the authority to establish the reasonable and competitively neutral rates for an independent organization, like ERCOT.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, and 39.151.

*§22.252. Procedures for Approval of ERCOT Fees and Rates.*

(a) Procedures. Except to the extent modified in this section, the commission's procedural rules concerning contested cases will govern the conduct of hearings, discovery, burden of proof, and resolution of disputes relating to Electric Reliability Council of Texas (ERCOT) fees and rates.

(b) Interim approval. ERCOT may request interim approval of a fee or rate, or a change in a fee or rate, based on a showing of good cause. A request for interim relief shall be filed no later than 60 days before the interim relief is proposed to take effect. A fee or rate charged on an interim basis shall be subject to refund if it exceeds the final fee or rate set by the commission, unless a refund would harm ERCOT's ability to efficiently perform its required functions.

(c) Filing package. The fee and rate application shall be in substantial compliance with a fee-filing package approved by the commission.

(d) ERCOT notice. Once a docket number has been assigned to the fee and rate application, ERCOT shall provide notice of the application to all entities subject to the fees and rates (as identified through the current information available to ERCOT) and to all parties that intervened in its most recent fee and rate application docket. This notice may be made by electronic mail. ERCOT will also post the notice and a copy of its fee and rate application on its web site. ERCOT shall file an affidavit to evidence that notice has been provided in accordance with this subsection. The notice shall contain the following information:

(1) the docket number of the fee and rate application;

(2) in dollars per megawatt hour, the amount of the current fee and rate, the amount of the proposed fee and rate increase or decrease, and the total fee and rate amount after the increase or decrease goes into effect;

(3) the effect the proposed fee and rate is expected to have on ERCOT's revenues;

(4) the effective date of the proposed fee and rate;

(5) a description of the entities affected by the proposed fee and rate;

(6) a brief explanation of the need for the proposed fee and rate;

(7) the deadline for intervention in the proceeding; and

(8) the following language: "Persons who wish to intervene in or comment in this proceeding should notify the Public Utility Commission of Texas within 30 days of the date of this notice. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. A request to intervene shall include a statement of position containing a concise statement of the requestor's position on the application, a concise statement of each question of fact, law, or policy that the requestor considers at issue and a concise statement of the requestor's position on each issue identified."

(e) Commission notice. The commission shall publish notice of the fee and rate application in the *Texas Register*. This notice shall contain the same information required in subsection (d) of this section.

(f) Schedule. If ERCOT seeks to change its fees and rates, it shall file an application not less than 120 days before the new rate and fee is to become effective. The deadline for parties to intervene in a fee and rate application proceeding shall be 30 days after the date notice is issued by ERCOT pursuant to subsection (d) of this section.

(g) Processing of the application. If no motion to intervene is filed by the intervention deadline, and no statement of position objecting to the fee and rate application is filed by the commission staff, the fee and rate application shall be presented to the commission for consideration of approval.

(1) If a motion to intervene objecting to the fee and rate application is filed, the commission shall review the motion to determine whether it raises any disputed issues of fact, law or policy. If the motion does not raise factual issues, the commission may resolve any disputed issues of law or policy on the basis of briefing, if briefing is requested by the commission.

(2) If factual issues must be resolved, the matter shall be referred to the State Office of Administrative Hearings for the making of all necessary factual determinations and the preparation of a proposal for decision, including findings of fact and conclusions of law, unless the commission or a commissioner serves as the finder of facts.

(3) The commission shall render a final decision approving or denying a fee application under this section within 120 days of the date of filing of the application, unless the commission extends the time for a final decision. If the commission does not make a final determination concerning a fee and rate change before the proposed effective date, the commission will be considered to have approved the change on an interim basis as of the proposed effective date, subject to the authority of the commission thereafter to require a refund upon conclusion of the hearing.

(h) Review of fees based on a complaint. On its own initiative, or upon complaint by an affected person, the commission may enter an order changing the fees and rates charged by ERCOT, after reasonable notice and hearing, if it finds that the existing fees and rates are unreasonable, are not competitively neutral, are insufficient to cover ERCOT's costs, or are in violation of law. The presiding officer shall establish the procedures for processing such complaints in accordance with the commission's procedural rules.

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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Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: August 8, 2003
For further information, please call: (512) 936-7308

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## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS
## SUBCHAPTER O. UNBUNDLING AND MARKET POWER
## DIVISION 2. INDEPENDENT ORGANIZATIONS

**16 TAC §25.362, §25.363**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance, and new §25.363, relating to ERCOT Fees and Other Rates, with changes to the proposed text as published in the August 8, 2003 edition of the *Texas Register* (28 TexReg 6172). The amendment and the new section are adopted under Project Number 27736. The new rule establishes the manner in which ERCOT will maintain its accounts and records, the appropriate expense components to be included in ERCOT's fees and rates, and the method of calculating those rates. The amendment adds related reporting requirements concerning ERCOT expenditures and long term operating plans. Prior requests for fee changes have been conducted by the commission on an ad hoc basis, addressing issues as they arose in those cases. Based upon its experience in those cases, the commission has decided to standardize the information that is required to review the reasonableness and sufficiency of ERCOT's fees. Additionally, the commission has determined that additional reporting by ERCOT is needed for the commission to remain informed about changes in ERCOT's revenues and expenses during the time between fee change applications. By implementing these new reporting requirements and providing more specificity in the elements considered in reviewing ERCOT's fees, the new rule and the amendment will make commission oversight of ERCOT and the review of its fees more efficient and effective and will facilitate participation by interested persons in reviewing ERCOT's fees. The commission finds that these rules will support the public interest by providing greater regulatory certainty, increasing the efficiency of the commission's

review process and helping to maintain reasonable fees for ERCOT's services.

In addition, the commission, under a separate order, also adopts a new procedural rule, §22.252 (relating to Procedure for Approval of ERCOT Fees and Rates). The new procedural rule is being published separately, but was adopted as part of Project Number 27736.

The commission staff conducted a public hearing on these sections on September 10, 2003. Although public comment was invited, no person provided comments at the public hearing.

The commission received written comments on the proposed sections on August 29, 2003 from Reliant Resources, Inc. (RRI) and ERCOT. Reply comments were submitted by ERCOT. All comments, including any not specifically referenced herein, have been fully considered by the commission. The commission has made other minor modifications for the purpose of clarifying its intent and for format or grammatical purposes.

§25.362 Electric Reliability Council of Texas (ERCOT) Governance

*§25.362(h)(2), Quarterly reports*

ERCOT found this provision confusing, contending that it was unsure what information it would be required to provide in the quarterly reports. ERCOT suggested that the language should be revised to require it to provide an accounting of budgeted and actual revenues and expenses with an explanation of any significant variances and that only the fourth quarterly report should include a report on the expected use of any unexpended funds.

*Commission response*

ERCOT's proposed revision to truncate the reporting requirement by requiring it to provide an accounting of budgeted and actual revenues and expenses with an explanation of any significant variance is unacceptable. ERCOT's proposal would prevent the commission from obtaining necessary information about ERCOT's assets and liabilities, as contained in Attachment A - Standard Chart of Accounts of the fee-filing package. This would reduce the commission's ability to monitor ERCOT's accounting and financial condition during the time between fee changes. In addition, the commission declines to accept ERCOT's proposed revision that would require it to only provide an explanation for significant variations between budgeted and actual revenues and expenses. The commission finds that it is important to monitor the changes in timing and amounts of expenditures and accounts that deviate from their original budgeted amounts, not just "significant" changes in those amounts.

The commission agrees with ERCOT that during the first three quarters of the budget year it would not be useful to report the expected use of funds in the subsequent year. A report should only be required when funds are not expended within the year budgeted. Since funds not expended in one quarter may be subsequently expended in a later quarter during the same year, requiring such a report on a quarterly basis would not provide meaningful information. A report on the use of unexpended funds should only be required for the fourth quarter. The commission modifies the language of the rule on this point.

*§25.362 (k), Long-term operations plan*

RRI commented that a long-term operations plan would require ERCOT to expend additional costs, time, and labor to provide information that is repetitive of the guidelines and the general descriptions contained in existing statutes, by-laws, and protocols. RRI further noted that the plan would require a long-term forecasting of goals and budgets, which are not necessary since this proposed rule requires a full cost of service review prior to the approval of any new changes in its rates or fees. RRI stated that the long run planning exercise is superfluous in light of the cost of service ratemaking requirements and its elimination would help reduce costs. Therefore, RRI believes this entire subsection should be deleted.

ERCOT disagreed with RRI's comments. ERCOT stated that long-term planning and public disclosure of that planning is a valuable tool for ERCOT. ERCOT asserted that the costs of compliance with this portion of the rule would not be significant and that the benefits to be obtained would be worthwhile. While it supported the provision, ERCOT also urged the commission to make certain changes in the language and to make it clear that an ERCOT fee case was not the appropriate forum in which to debate the items included in the long-term plan. ERCOT asserted that the language was unclear and inconsistent with ERCOT terminology in some aspects. ERCOT urged the commission to revise the language to more clearly state its obligations concerning the long-term operations plan and provided language to accomplish that result.

*Commission response*

The commission disagrees with RRI's assertion that a long-term operations plan is far too costly to warrant and that the entire subsection should be deleted. The commission agrees with ERCOT that the long-term operations plan presents important information for both the commission and any persons interested in the amount and timing of ERCOT fee changes. Therefore, the commission declines to eliminate the requirement from the rule. The commission agrees with ERCOT's comments that the language in the rule may be unclear. In order to clarify the rule, the commission accepts the revisions proposed by ERCOT.

§25.363 ERCOT Fees and Other Rates

*§25.363(b), System of accounts and reporting*

*Chart of accounts*

ERCOT objected to the requirement that it maintain accounts reflecting all expenses in a manner that allows the commission to determine the costs for each activity that is subject to a separate fee. ERCOT argued that, with the exception of its System Administrative Fee, WAN Fee and non-ERCOT LSE Fee, its other fees are insignificant. ERCOT does not currently track the costs associated with those fees and the cost of creating systems to separately account for such costs would outweigh any benefit. ERCOT also disputed the need for a rule provision requiring it to obtain commission approval before implementing new or modified accounts. ERCOT stated that approval of the accounts will be done in the commission project related to adopting a form for the fee-filing application. For these reasons, ERCOT urged the commission to delete the requirements to functionalize its accounts by fee and to obtain commission approval before modifying its accounts.

*Commission response*

The commission does not want to add undue costs to the ERCOT budget. Nevertheless, the commission needs the ability to match ERCOT's revenues with its costs to determine if excess funds are available for other uses. The commission is not requiring ERCOT to fully unbundle its fees, but to provide information

so that it can track revenue with broad cost causation and allocation. The commission agrees with ERCOT that all fees other than the System Administrative Fee, the WAN Fee and the non-ERCOT LSE Fee are not significant revenue generators. However, the costs that the System Administrative Fee covers are significant and need to be reported in sufficient amount of detail to determine reasonableness. That same level of detail is not necessary for other fees and the rule should not be interpreted to require such detail.

The commission believes that implicit in any review of revenues and costs is the ability to make year-to-year comparisons. However, the commission also understands that modifications and creation of accounts is necessary as circumstances warrant, and therefore believes it can review and approve account changes in any subsequent fee case. Thus, the commission concurs that the proposed rule does not need to separately require ERCOT to seek and obtain commission approval prior to implementing new or modified accounts outside of the approval process for the fee-filing package and has revised the language used in the rule. The revised language allows ERCOT to make some changes but provides that ERCOT may not change its chart of accounts to be any less detailed than that required in the fee-filing package without prior commission approval.

*Long-term operations plan*

ERCOT suggested modifying the rule to avoid an implication that the commission would approve the long-term plan required by §25.362(b).

*Commission response*

The commission agrees with ERCOT's modification of the language describing the long-term operations plan and modifies the rule accordingly.

*§25.363(c), Allowable expenses for fees and rates*

*Future Test Year*

ERCOT supported the provisions of the rule allowing it to use a future test year in determining its fees. ERCOT asserted that, because it is currently undergoing a period of expansion, the ability to use a future test year enables it to ensure that its fees will produce revenue that matches its expected costs. ERCOT did not propose any changes to the rule concerning this topic.

*Commission response*

The commission notes that the rule requires the use of a historic test year, but allows the use of a future test year "if ERCOT demonstrates that the scope of its activities and functions has been expanded by the commission or the market participants, resulting in higher future costs." The commission agrees with ERCOT that the flexibility to use a future test year is important during this start-up period, but the commission expects that, once ERCOT's operations become more stable, the use of a future test year will become more rare. ERCOT's comments do not require any changes to the rule.

*Allowable expenses*

ERCOT stated that it appreciates the provisions in the rule allowing it to recover some expenses related to charitable contributions and public service announcements. However, ERCOT felt that the language of the rule was confusing and proposed revisions to state that the expenses are allowed, rather than stating that they are not disallowed, and to correct some typographical errors.

*Commission response*

The commission agrees with ERCOT's suggestion to add clarity to the language of the rule but declines to adopt the specific language proposed by ERCOT. The commission believes that the limitations for public service announcements should be kept and has accepted ERCOT's suggestion to list them as allowed expenses. However, the commission does not agree with ERCOT's suggestion to list charitable contributions as an allowable expense. The commission finds that, in most instances, charitable contributions are not "costs" incurred by ERCOT in performing the functions required by PURA §39.151 and it is not appropriate to allow mandatory fees to be extended for charitable contributions. Accordingly, the commission is deleting any language that would indicate that such contributions would automatically be included as allowable expenses in setting ERCOT's fees. By not allowing contributions to be included as an expense, the commission is not preventing or discouraging ERCOT's employees from making voluntary contributions to charities of their choosing. The commission has also corrected the typographical errors noted by ERCOT.

The commission is also adding language to subsection (c)(3)(F) of this section to indicate that an expense will be disallowed if it is not sufficiently supported by the fee- filing package and accompanying evidence that ERCOT files with its application. This requirement is based upon other commission rules that require the submission of a fee- filing package and that place the burden of proof on an applicant to support its application. The language is added to provide an explicit recitation of the requirement created by those rules and does not add any new substantive requirements.

The new section and amendment are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (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; and specifically, PURA §39.151, which grants the commission oversight and review authority over independent organizations, like ERCOT, and authorizes the commission to establish reasonable and competitively neutral rates for such organizations.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.151.

*§25.362. Electric Reliability Council of Texas (ERCOT) Governance.*

(a) Purpose. This section provides standards for the operation of an independent organization within the ERCOT region.

(b) Application. This section applies to ERCOT or any other organization within the ERCOT region that qualifies as an independent organization under the Public Utility Regulatory Act (PURA) §39.151.

(c) Adoption of rules by ERCOT and commission review. ERCOT shall adopt and comply with procedures concerning the adoption and revision of protocols and procedures that constitute statements of general policy and that have an impact on the governance of the organization or on reliability, settlement, customer registration, or access to the transmission system.

(1) The procedures shall provide for advance notice to interested persons, an opportunity to file written comments or participate in public discussions, and, in the case of new protocols or revisions to protocols, an evaluation by ERCOT of the costs and benefits to the organization and the operation of electricity markets.

(2) The commission shall process requests for review of ERCOT protocols, procedures, and decisions in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct).

(d) Access to meetings. ERCOT shall adopt and comply with procedures for providing access to its meetings to market participants and the general public. These procedures shall include provisions on advance notice of the time, place, and topics to be discussed during open and closed portions of the meetings, and making and retaining a record of the meetings. Records of meetings of the board of directors shall be retained permanently, and ERCOT shall establish reasonable retention periods, but not less than five years, for records of other meetings.

(e) Access to information. This subsection governs access to information held by ERCOT and access to information held by the commission that it receives from ERCOT.

(1) ERCOT shall adopt and comply with procedures that allow persons to request and obtain access to records that ERCOT has or has access to relating to the governance and budget of the organization, market operation, reliability, settlement, customer registration, and access to the transmission system. ERCOT shall make these procedures publicly available. Information that is available for public disclosure pursuant to ERCOT procedures shall normally be provided within ten business days of the receipt of a request for the information. If a response requires more than ten business days, ERCOT will notify the requester of the expected delay and the anticipated date that the documents may be available. ERCOT's procedures regarding access to records shall be consistent with this section.

(A) Information submitted to or collected by ERCOT pursuant to requirements of the protocols or operating guides shall be protected from public disclosure only if it is designated as Protected Information pursuant to the Protocols, except as otherwise provided in this subsection.

(B) On its own motion or the petition of an affected party, including commission staff, the commission may, after providing reasonable notice to affected parties and an opportunity to be heard, amend the definition of "Protected Information" or the designation of "Items Not Considered Protected Information" under the ERCOT Protocols. In considering such an amendment, the commission may review the specific information under consideration or a general description of such information.

(C) The procedures adopted by ERCOT under this subsection shall include provisions for promptly responding to a request from the commission or commission staff for information that ERCOT collects, creates or maintains in order to provide the commission access to information that the commission or commission staff determines is necessary to assess market power and the development and operation of competitive wholesale and retail markets; to evaluate possible violations of laws, rules, protocols, or codes of conduct; or to carry out the commission's responsibilities for oversight of ERCOT.

(2) Commission employees, consultants, agents, and attorneys who have access to Protected Information pursuant to this section shall not disclose such information except as provided in this subsection and in accordance with the provisions of the Texas Public Information Act (TPIA).

(A) If the commission receives from a member of the Texas Legislature a request for information that the commission has or has access to that is designated as "Protected Information" under the ERCOT Protocols, the commission shall provide the information to the requestor pursuant to the provisions of Texas Government Code Annotated 552.008. If permitted by the requesting member of the Texas Legislature the commission shall notify ERCOT, and, if applicable, the entity that provided the information to ERCOT, of the existence of the request, the identity of the requestor, and the substance of the request.

(B) If the commission receives a request for information that the commission has or has access to that has been designated as Protected Information under the Protocols the commission shall make a good faith effort to provide notice of the request to the affected market participant and ERCOT within three business days of receipt of the request. If the third-party provider of the information objects to the release of the information, the commission shall offer to facilitate an informal resolution between the requestor and the third party. If informal resolution of an information request is not possible, the commission will process the request in accordance with the TPIA.

(C) In the absence of a request for information, if the commission staff seeks to release information that the commission has or has access to that has been designated as Protected Information under the Protocols, the commission may determine the validity of the asserted claim of confidentiality through a contested-case proceeding. In a contested case proceeding conducted by the commission pursuant to this subsection, the staff, the entity that provided the information to the commission, and ERCOT will have an opportunity to present information or comment to the commission on whether the information is subject to protection from disclosure under the TPIA.

(D) In connection with any challenge to the confidentiality of information under subparagraph (C) of this paragraph, any person who asserts a claim of confidentiality with respect to the information must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of such assertion.

(E) Except as otherwise provided in subparagraph (A) of this paragraph, if either the commission or the attorney general determines that the disclosure of information designated as Protected Information under the ERCOT Protocols is appropriate, the commission shall provide notice to the entity that provided the information and to ERCOT at least three business days prior to the disclosure of the Protected Information (or, in the case of a valid and enforceable order of a state or federal court of competent jurisdiction specifically requiring disclosure of Protected Information earlier than within three business days, prior to such disclosure).

(f) Conflicts of interest. ERCOT shall adopt policies to ensure that its operations are not affected by conflicts of interests relating to its employees' outside employment and financial interests and its contractors' relationships with other businesses. These policies shall include an obligation to protect confidential information obtained by virtue of employment or a business relationship with ERCOT.

(g) Qualifications for membership on governing board. ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.

(1) The qualification criteria shall include:

(A) Definitions of the market sectors;

(B) Levels of activity in the electricity business in the ERCOT region that an organization in a market sector must meet, in order for a representative of the organization to serve as a member of the governing board;

(C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; and

(D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board.

(2) The procedures for removal of a member from service on the governing board shall include:

(A) Procedures for determining whether an organization or individual meets the criteria adopted under paragraph (1) of this subsection; and

(B) Procedures for the removal of an individual from the governing board if the individual or the organization that the individual represents no longer meets the criteria adopted under paragraph (1) of this subsection.

(3) The procedures adopted under paragraph (2) of this subsection shall:

(A) Permit any interested party to present information that relates to whether an individual or organization meets the criteria specified in paragraph (1) of this subsection; and

(B) Specify how decisions concerning the qualification of an individual will be made.

(4) A decision concerning an individual or organization's qualification is subject to review by the commission.

(h) Required reports.

(1) Annual report. Beginning with the 2002 calendar year, ERCOT shall file an annual report with the commission, not later than 120 days after the end of the year. The annual report shall include:

(A) An independent audit of ERCOT's financial statements for the report year;

(B) A schedule comparing actual revenues and costs to budgeted revenues and costs for the report year and a schedule showing the variance between actual and budgeted revenues and costs;

(C) An independent audit of ERCOT's market operation for the report year;

(D) The annual board-approved budget; and

(E) Any other information the commission may deem necessary.

(2) Quarterly reports. ERCOT shall file quarterly reports no later than 45 days after the end of each quarter, which shall include:

(A) All internal audit reports that were produced during the reporting quarter;

(B) A report on performance measures, as prescribed by the commission;

(C) By account item as established in the fee-filing package prescribed by the commission under §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) a report of:

*(i)* ERCOT fees and other rates, funds allocated, funds encumbered, and funds expended;

*(ii)* An explanation for expenditures deviating from the original funding allocation for the particular account item;

*(iii)* For the report covering the fourth quarter of ERCOT's fiscal year, a detailed explanation of how unexpended funds will be expended in the subsequent year; and

(D) Any other information the commission may deem necessary.

(i) Compliance with rules or orders. ERCOT shall inform the commission with as much advance notice as is practical if ERCOT realizes that it will not be able to comply with PURA, the commission's substantive rules, or a commission order. If ERCOT fails to comply with PURA, the commission's substantive rules, or a commission order, the commission may, after notice and opportunity for hearing, adopt the measures specified in this subsection or such other measures as it determines are appropriate.

(1) The commission may require ERCOT to submit, for commission approval, a proposal that details the actions ERCOT will undertake to remedy the non-compliance.

(2) The commission may require ERCOT to begin submitting reports, in a form and at a frequency determined by the commission, that demonstrate ERCOT's current performance in the areas of non-compliance.

(3) The commission may require ERCOT to undergo an audit performed by an appropriate independent third party.

(4) The commission may assess administrative penalties under PURA Chapter 15, Subchapter B.

(5) The commission may suspend or revoke ERCOT's certification under PURA §39.151(c) or deny a request for change in the terms associated with such certification.

(6) The imposition of one penalty under this section does not preclude the imposition of other penalties as appropriate for the instance of non-compliance or related instances of non-compliance.

(7) In assessing penalties, the commission shall consider the following factors:

(A) Any prior history of non-compliance;

(B) Any efforts to comply with and to enforce the commission's rules;

(C) The nature and degree of economic benefit or harm to any market participant or electric customer;

(D) The damages or potential damages resulting from the instance of non-compliance or related instances of non-compliance;

(E) The likelihood that the penalty will deter future non-compliance; and

(F) Such other factors deemed appropriate and material to the particular circumstances of the instance of non-compliance or related instances of non-compliance.

(8) The commission may initiate a compliance proceeding or other enforcement proceeding upon its own initiative or after a complaint has been filed with the commission that alleges that the ERCOT has failed to comply with PURA, the commission's substantive rules, or a commission order.

(9) Nothing in this section shall preclude any form of civil relief that may be available under federal or state law.

(j) Priority of commission rules. This section supersedes any protocols or procedures adopted by ERCOT that conflict with the provisions of this section. The adoption of this section does not affect the

validity of any rule or procedure adopted or any action taken by ERCOT prior to the adoption of this section.

(k) Long-term operations plan. Annually, by October 31st, ERCOT shall file a long- term operations plan. At a minimum, the long-term operations plan shall provide the following information:

(1) A description of ERCOT's roles and responsibilities within the electric market in Texas, including system reliability, centralized control and power scheduling, centralized commercial functions, and a description of how ERCOT's roles and responsibilities relate to the roles and responsibilities of the transmission and distribution utilities and retail electric providers;

(2) An overview of the major systems, including both hardware and software, operated by ERCOT, including descriptions of the functionality provided, estimates of remaining useful life, estimates of ongoing maintenance and upgrade costs, and evaluations of the performance of each system;

(3) A description of major capital projects completed in the current budget year and those expected to be completed in the next budget year, including an explanation of why each project is needed to assist ERCOT in meeting its responsibilities;

(4) A schedule summarizing ERCOT's sources and uses of funds for a six-year period beginning with the last historic calendar year and projections for the next five calendar years;

(5) Long-term goals for all ERCOT activities;

(6) An evaluation of ERCOT's performance in meeting its responsibilities and system expectations, as set forth in PURA and the commission rules, during the current budget year; and

(7) Any other information or activity required by the commission.

*§25.363. ERCOT Fees and Other Rates.*

(a) Scope. This section applies to all fees and rates levied or charged by the Electric Reliability Council of Texas (ERCOT) in its role as an independent organization under the Public Utility Regulatory Act (PURA) §39.151. Charges for wholesale market services acquired by ERCOT in accordance with its protocols are not governed by this section, but may be revised in accordance with §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance).

(1) A fee or rate that was in effect on the effective date of this section shall remain in effect and shall not be changed without commission approval.

(2) ERCOT must seek and obtain commission approval of any new or modified rate or fee prior to implementing the new or modified rate or fee.

(b) System of accounts and reporting. For the purpose of accounting and reporting to the commission, ERCOT shall maintain its books and records in accordance with Generally Accepted Accounting Principles. ERCOT shall establish a standard chart of accounts and employ it consistently from year to year. The standard chart of accounts shall be used for the purpose of reporting to the commission and shall be consistent with the fee-filing application approved by the commission and the long-term operations plan. The accounts shall show all revenues resulting from the various fees charged by ERCOT and reflect all expenses in a manner that allows the commission to determine the sources of the costs incurred for each activity for which a separate fee is charged. ERCOT may not change its chart of accounts to be any less detailed than that required in the fee-filing package without prior commission approval.

(c) Allowable expenses for fees and rates. Fees and rates shall be based upon ERCOT's cost of performing its required functions as described in PURA §39.151(a). To determine the reasonable cost of performing its functions, ERCOT shall use a historical test year, except that ERCOT may use a future test year if ERCOT demonstrates that the scope of its activities and functions has been expanded by the commission or the market participants, resulting in higher future costs. To determine if the costs are reasonable and necessary, the commission shall review ERCOT's costs for consistency compared to the ERCOT long-term operations plan, to costs incurred by market participants and other independent system operators for similar activities, and to any other information and data considered appropriate by the commission.

(1) Only those expenses that are reasonable and necessary to carry out the functions described in PURA §39.151, shall be included in allowable expenses.

(2) Allowable expenses, to the extent they are reasonable and necessary may include, but are not limited to the following general categories:

(A) Operating expenses, which include salaries and related benefits, direct advertising for the specific purpose of recruiting employees, legal and consulting services, hardware and software maintenance and licensing, insurance, employee training and travel, and depreciation;

(B) Facility and equipment costs, and other long-lived investments;

(C) Debt service (interest plus principal reduction) and other reasonable and necessary costs of capital to fund investments in property and facilities, and other capital expenditures that are used and useful in performing the functions of an independent organization;

(D) Expenses associated with fees and dues charged by organizations setting electric or energy business practices and communications standards (*e.g.*, North American Electric Reliability Council ("NERC"), North American Energy Standards Board ("NAESB"), and ISO/RTO Council) to which ERCOT is presently a member; and

(E) Actual expenditures for public service announcements and community education efforts, provided that the total sum of all such items allowed in the cost of service shall not exceed 0.05% of the annual ERCOT revenue requirement or $50,000, whichever is less.

(3) The following are not allowable as a component of expenses:

(A) Legislative advocacy expenses, whether made directly or indirectly;

(B) Funds expended in support of political candidates, movements or causes;

(C) Funds expended promoting religious causes;

(D) Funds expended in support of or in acquiring membership in social, recreational, or fraternal clubs or organizations;

(E) Funds expended for advertising, marketing, or other promotions, which includes, but is not limited to:

*(i)* promotional goods;

*(ii)* efforts to increase name recognition;

*(iii)* radio, television, newspaper or other media advertising; except as otherwise expressly authorized; and

(F) any expenditure found by the commission to be unreasonable, unnecessary, not in the public interest, or not sufficiently supported by the fee-filing package and accompanying evidence.

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 October 14, 2003.

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For further information, please call: (512) 936-7308

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# PART 9. TEXAS LOTTERY COMMISSION

## CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

## SUBCHAPTER D. LOTTERY GAME RULES

### 16 TAC §401.315

*(Editor's Note: House Bill 3459, 78th Legislature, Regular Session, which authorizes the Texas Lottery Commission to enter into an agreement to participate in a multijurisdictional lottery game, exempts the Commission from the requirement of proposing new §401.315 before adopting it on a permanent basis. Although the statute terms it an "emergency" rule, it will be incorporated into the Texas Administrative Code.)*

The Texas Lottery Commission adopts emergency rule §401.315 relating to Mega Millions on-line game, a multijurisdiction lottery game. The rule establishes the game rules for the Mega Millions game in Texas. Mega Millions is a multijurisdiction lottery game in which 11 jurisdictions, including Texas, participate in order to pool sales from each jurisdiction so that larger jackpot amounts can be generated. Large jackpots tend to increase sales and higher sales volumes tend to increase jackpots. As a result of the interplay between sales and jackpot amounts, the respective jurisdictions are able to generate additional revenue for the purposes the lotteries in each of the jurisdictions serve. In Texas, revenue from the sale of lottery tickets is deposited in the Foundation School Fund.

Generally, the rule governs the operation and play of the Mega Millions game in Texas. Specifically, the rule identifies the purpose of the rule, defines words used in the rule, describes the play for the game, describes the prizes for the game, provides for a game feature that offers an opportunity to increase prize amounts for prize categories other than the grand/jackpot prize, allows a subscription sales program at the discretion of the executive director, identifies a prize liability cap which, if invoked, changes the guaranteed prize characterization of the second through fifth prizes to pari-mutuel characterization, allows for the number of prize categories and the allocation of the prize fund to be changed at the discretion of directors of the jurisdictions that participate in the Mega Millions game for promotional purposes, sets out the requirements for ticket purchases, sets out information regarding the Mega Millions drawings, identifies the information to be disclosed regarding a jackpot or second prize winner, provides that unclaimed prizes be returned to party lotteries pursuant to the Mega Millions agreement, and allows for an announcement of an incentive or bonus program. These specific provisions of the rule provide notice to players in Texas as to the operation and play of the game.

The Commission invited public input on the concept of participation in a multijurisdiction lottery game and, if so, which one. Public input was received through July 14, 2003. The Commission solicited input through its website, mail, and at its June 30, 2003 Commission meeting. The purpose of soliciting input was to provide the Commission with views or opinions of the public regarding whether the Commission should participate in a multijurisdiction lottery game and, if so, which one. The two prominent multijurisdiction lottery games are Mega Millions and Powerball. The Commission received input both for and against participation. Of the input indicating an interest in participation, the games identified for the Commission's participation were Powerball and Mega Millions. Over 3,800 persons provided input during this time period.

Additionally, the concept of a multijurisdiction lottery game was tested using a mini-lab/focus group format. Mini-lab and focus group research was conducted in July 2003 in McAllen and Dallas with current Lotto Texas players to assess the viability of a multijurisdiction game in Texas. Overall, players reported their excitement related to a multijurisdiction lottery game being made available in Texas. Players reported increased overall spending on Lottery games with the inclusion of a multijurisdiction lottery game. Players reported that a multiplier feature made such a game more exciting and valuable as a lottery game. Players liked both games. Players appeared to be more familiar with Powerball than Mega Millions. While players initially appeared to be more interested in Powerball, when asked if they would be as interested in Mega Millions if it had a multiplier feature, many stated they would. This report suggests that as excited as players were about a multijurisdiction lottery game, their reported excitement grew with the addition of a multiplier feature on the game. Beyond name recognition, the multiplier feature appears to be what distinguished the two games from one another for the players.

At the August 5, 2003 Commission meeting, the Executive Director recommended to the Commission that the Commission participate in the Mega Millions game and that the Executive Director be authorized to negotiate an agreement with the jurisdictions that currently participate in the Mega Millions game. Certain factors the Executive Director considered as critical factors in terms of participating in the Mega Millions games were revenue to the State, cannibalization of existing games, and the game that was the best fit for Texas. The Commission authorized the Executive Director to negotiate the agreement consistent with the Executive Director's recommendation regarding the operation of the game subject to issues that would cause the Executive Director to determine that the Commission should meet at a subsequent meeting to consider the agreement. The Commission met again on October 16, 2003 to consider authorizing the Executive Director to enter into the Mega Millions multijurisdiction lottery game agreement and to adopt the emergency rule. At the October 16, 2003 Commission meeting, the Commission authorized the Executive Director to enter into the agreement and the Executive Director did sign the agreement, thus finalizing the terms of the agreement. In order to adopt the game rule,

the terms of the agreement had to be finalized because the terms of the agreement and documents incorporated by reference into the agreement dictated to an extent the provisions of the Texas lottery game rule. In other words, the terms of the agreement finalized before a rule could be considered for adoption.

The Commission adopts this rule without prior notice or hearing as authorized pursuant to HB 3459, Section 79, 78th Legislature, Regular Session. However, as previously indicated, the Commission solicited public input on the concept of the Commission's participation in a multijurisdiction lottery game and, if so, which one. While no rule had been proposed at the time the Commission solicited input, from June 30, 2003 through July 14, 2003, the issue of the Commission's participation in such a game was publicized in Texas newspapers, posted on the Commission's website, the subject of television and radio news stories, and an item on the Commission's June 30, 2003 open meeting held at the State Capitol. Additionally, representatives from the Powerball and Mega Millions groups appeared at the June 30, 2003 Commission meeting and provided comment on the respective games. The public was also able to offer input at the June 30, 2003 meeting. The practicalities of the situation precluded the Commission from being able to propose a rule during this time period for comment given that the Commission had not decided which game, if any, to join. While the Commission decided at its August 5, 2003 meeting to enter into negotiations with the Mega Millions states, unless and until negotiations resulted in an agreement, a specific game rule could not be considered because the specific aspects of the Powerball and Mega Millions games are different. Now that the Commission has entered into an agreement, the ability to adopt the rule pursuant to the authority provided by HB 3459 is important because time delays in implementing the Mega Millions game result in lost sales and resultant lost revenue to the state. The fiscal estimate of the loss in daily sales is approximately $1.236 million and $343 thousand in daily revenue to the State of Texas. Rulemaking under the Government Code Chapter 2001 (APA) generally requires a minimum of 50 days from proposal to the earliest date a rule can be effective. The rulemaking process under the APA requires a state agency to propose the rule for public comment. A state agency is required to give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A rule takes effect 20 days after the date on which it is filed with the Secretary of State's Office. Additional time is involved due to scheduling of Commission meetings and the interplay of the Open Meetings Act notice requirements. Further time delays arise due to the *Texas Register* filing deadlines for publication in the *Texas Register* as well as the publication of the *Texas Register* is only once per week. The *Texas Register* time lines are important considerations because a proposed rule must be published to provide notice to persons of the proposed agency rule and to begin the 30 days that must pass before an agency can consider a rule for adoption. If the Commission used the process set out for proposing a rule prior to adoption, the loss over 50 days is anticipated to be $61.8 million in ticket sales and $17.1 million in revenue to the State of Texas. The Commission can not be positioned to fully implement the applicable provisions of HB 3459, the agreement, and the rule until the rule is adopted and effective.

The purpose of the rule is to generate revenue for the State of Texas. The cost/benefit analysis for the Mega Millions game, including the multiplier feature, estimated the generation of $254,519,697 in sales based on per capita ticket sales of $0.39 and $91,557,343 in revenue for FY04; $313,639,295 in sales based on per capita ticket sales of $0.39 and $121,711,487 in revenue for FY05; $331,581,885 in sales based on per capita ticket sales of $0.40 and $129,011,173 in revenue for FY06; $337,881,941 in sales based on per capita ticket sales of $0.40 and $131,561,173 in revenue for FY07; and, $344,301,698 in sales based on per capita ticket sales of $0.40 and $134,159,068 in revenue for FY08. All sales are projected based on the ticket price for Mega Millions and the multiplier feature, each being $1.00.

Pursuant to Government Code §2006.002, the Texas Lottery Commission has determined that adoption of this rule will not create an adverse economic effect on small businesses or micro-businesses. Small and micro-businesses that are Texas Lottery retailers are expected to experience a positive impact due to the increased sales of Texas Lottery products.

The Commission adopts this rule pursuant to Government Code, Section 466.015 which authorizes the Texas Lottery Commission to adopt rules necessary to administer the State Lottery Act and rules governing the operation of the lottery, Government Code, Section 467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, and HB 3459, 78th, Regular Session, 2003, which requires the Commission to adopt rules necessary to implement multijurisdiction lottery games and, in particular, authorizes the Commission to adopt an emergency rule without prior notice or hearing, or with any abbreviated notice and hearing as the Commission finds practicable, for the implementation of the changes in law made by Subchapter J, for multijurisdiction lottery games, Chapter 466, Government Code. Pursuant to HB 3459, Government Code, Section 2001.034 does not apply to an emergency rule adopted under Section 79, HB 3459.

The APA, particularly §2001.034, provides that an agency may adopt an emergency rule in the event of "an imminent peril to the public health, safety, or welfare" or if "a requirement of state or federal law requires the adoption of a rule on fewer than 30 days' notice." While no imminent peril to the public health, safety, or welfare exists and neither state nor federal law requires an emergency rule, an emergency rule is expressly authorized by HB 3459, 78th Legislature, Regular Session. Further, in the event of a conflict between a general provision and a local or special provision, the local or special provision prevails as an exception to the general provision.

*§401.315. "Mega Millions" On-Line Game Rule.*

(a) Mega Millions. A Texas Lottery on-line game to be known as "Mega Millions" is authorized to be conducted by the executive director under the following rules, under such further instructions and directives as the executive director may issue in furtherance thereof, and pursuant to the requirements of the multijurisdiction agreement between all participating party lotteries. If a conflict arises between this section and §401.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence. The purpose of the Mega Millions game is the generation of revenue for party lotteries through the operation of a specially-designed multijurisdiction lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings.

(b) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) Advertised jackpot--The jackpot amount the Mega Millions directors establish for each Mega Millions drawing. The advertised jackpot is an amount that would be paid in 26 annual installments.

(2) Annual payment option--The option to receive payment in annual installment payments that can be selected by the player at the time of ticket purchase. This option is chosen automatically for the player if no payment option is selected by the player at time of ticket purchase. The option is to be paid the grand/jackpot amount in 26 annual payments, in the event the player has a valid winning jackpot ticket and consistent with the provisions of the rule. The term "annual payment option" is synonymous with the terms "annual option", "annuitized option", and "annuity option".

(3) Cash value option--An election a player must make at the time the player purchases a ticket in order to be paid the net present value of the player's share of the jackpot amount, in the event the player has a valid winning jackpot ticket and consistent with the provisions of the rule. The term "cash value option" is synonymous with the terms "cash option" and "net present value option".

(4) Executive director--The executive director of the Texas Lottery Commission. The term "executive director" is synonymous with the term "director".

(5) Grand/Jackpot prize amount--The amount awarded for matching, for one play, all of the numbers drawn from both fields. If more than one player from all participating lottery jurisdictions has selected all of the numbers drawn, the grand/jackpot prize amount shall be divided among those players. The amount actually paid will depend on the payment option elected at the time of purchase, consistent with the provisions of the rule.

(6) Multijurisdiction agreement--The amended and restated multijurisdiction agreement regarding the Mega Millions game, or any subsequent amended agreement, signed by the party lotteries and including the finance and operations procedures for Mega Millions, and on-line drawing procedures for Mega Millions.

(7) Multiplier feature--A Texas Mega Millions game feature, known as "Megaplier", by which a player, for an additional wager of $1 per play, can increase the guaranteed prize amount or pari-mutuel prize amount, as applicable, excluding the Grand/Jackpot prize by a factor of two, three, or four times depending upon the multiplier number that is drawn prior to the Mega Millions drawing.

(8) Number--Any play integer from one through 52.

(9) Party lotteries--One or more of the lotteries established and operated pursuant to the laws of the jurisdictions participating in Mega Millions or any other lottery which becomes a signatory to the Mega Millions agreement.

(10) Play--The six numbers selected on each play board and printed on the ticket. Five numbers are selected from the first field of 52 numbers and one number is selected from the second field of 52 numbers.

(11) Play board--Two fields of 52 numbers each found on the playslip.

(12) Playslip--An optically readable card issued by the commission used by players of Mega Millions to select plays and to elect to participate in the multiplier feature. There shall be five play boards on each playslip identified at A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Mega Millions play shall be $1.00. A player may purchase up to five plays on one ticket. Multiple draws are available for up to 10 consecutive draws beginning with the current draw. From time to time, the executive director may authorize the sale of Mega Millions tickets at a discount for promotional purposes. Additionally, a multiplier feature, Megaplier, is available for an additional $1 per play.

(d) Play for Mega Millions.

(1) Type of play. A Mega Millions player must select five numbers from the first field of numbers from 1 through 52 and an additional one number from the second field of numbers from 1 through 52 in each play or allow number selection by a random number generator operated by the computer, referred to as Quick Pick.

(2) Method of play. The player may use playslips to make number selections. The terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available or if a player is unable to complete a playslip, the retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to issue a ticket. The use of mechanical, electronic, computer generated or any other non-manual method of marking a playslip is prohibited. A player may leave all play selections to a random number generator operated by the terminal, referred to as Quick Pick.

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Multiplier Feature.

(1) Type of play. A Mega Millions player may elect to participate in the multiplier feature, known as "Megaplier", by wagering an additional $1.00 per play at the time of his/her Mega Millions ticket purchase.

(2) Multiplier drawing. A random drawing will occur in Texas before every Mega Millions drawing to determine one multiplier number for that drawing. The multiplier number that will be selected will be either a 2, 3, or 4. In the event the multiplier drawing does not occur prior to the Mega Millions drawing, the multiplier number will be a 4.

(3) Multiplier number frequency. The one multiplier number will be selected from a field of numbers according to the following relative frequencies:
Figure: 16 TAC §401.315(e)(3)

(4) Selection of multiplier number. The multiplier number selected is the number that is used to increase the prize amount, other than the Grand/Jackpot prize. A prize winner who chose to participate in the multiplier feature by wagering an additional $1 per play at the time of the player's Mega Millions ticket purchase is paid a prize in the amount of the guaranteed prize amount or the pari-mutuel prize amount, as applicable, other than the Grand/Jackpot prize multiplied by the multiplier number for that drawing.

(5) The relative frequency of the numbers may be changed and/or additional numbers may be added at the discretion of the executive director from time to time for promotional purposes. Such change shall be announced by public notice.

(f) Prizes for Mega Millions.

(1) Prize amounts. The prize amounts, for each drawing, paid to each Mega Millions winner who selects matching combinations of numbers, with the exception of the grand/jackpot prize, are guaranteed prizes.

(2) Prize pool. The prize pool for Mega Millions prizes is estimated to be 50% of Mega Millions sales, but may be higher or lower based upon the number of winners at each guaranteed prize level, as well as the funding required to meet the advertised jackpot .

(3) Prize categories.

(A) Matrix of 5/52 and 1/52 with 50 percent estimated prize fund.
Figure: 16 TAC §401.315(f)(3)(A)

(B) Jackpot prize payments.

*(i)* The portion of the prize money allocated from the current Mega Millions prize pool for the grand/jackpot prize, plus any previous portions of prize money allocated to the grand/jackpot prize category in which no matching tickets were sold and money from any other available source pursuant to a guaranteed first prize amount announcement will be divided equally among all jackpot prize winners in all participating lotteries. Prior to each drawing, the Mega Millions grand/jackpot prize amount that would be paid in 26 annual installments will be advertised. The advertised jackpot prize amount shall be the basis for determining the amount to be awarded for each Mega Millions play matching all five of the five Mega Millions winning numbers drawn for field 1 and the one Mega Millions winning number drawn for field 2. When there is only one winning Mega Millions ticket for the jackpot prize, no grand/jackpot prize paid in 26 annual installments shall be less than $10 million.

*(ii)* If in any Mega Millions drawing there are no Mega Millions plays which qualify for the grand/jackpot prize category, the portion of the prize fund allocated to such grand/jackpot prize category shall remain in the jackpot prize category and be added to the amount allocated for the grand/jackpot prize category in the next consecutive Mega Millions drawing.

*(iii)* If there are multiple matching tickets sold of the Mega Millions grand/jackpot prize from among all participating lotteries, and if the annual option amount of prize being awarded to each winner equals or exceeds $1 million, then the winner(s) in Texas will be paid in accordance with their selection of cash option or annual payment option made at the time of ticket purchase. If there are multiple shares of the annual option Mega Millions grand/jackpot prize from among all participating lotteries, and if the annual option amount of the prize being awarded to each winner is less than $1 million, then the winner(s) in Texas will be paid in a single payment, notwithstanding purchaser's selection at time of purchase.

*(iv)* In the event of a prize winner who selects the cash value option, the prize winner's share will be paid in a single payment upon completion of internal validation procedures. The player in Texas must make the election of the cash value option at the time of ticket purchase. If the player does not make the election at the time of ticket purchase, the share will be paid in accordance with paragraph (3), if applicable, and paragraph (5) of this subsection. The cash option amount shall be the amount determined by dividing the grand/jackpot prize amount that would be paid over 26 annual installments by a rate established by the Mega Millions finance committee prior to each drawing divided by the number of total jackpot winners.

*(v)* Annual payment option jackpot prizes shall be paid in 26 annual installments upon completion of internal validation procedures. The initial payment shall be paid upon completion of internal validation procedures. The subsequent 25 payments shall be paid annually to coincide with the month of the Federal auction date at which the bonds were purchased to fund the annuity. All such payments shall be made within seven days of the anniversary of the annual auction date.

*(vi)* The jackpot prize must be claimed at the Austin claim center regardless of the prize amount.

(C) Second through ninth level prizes.

*(i)* Second Prize: Mega Millions plays matching five of the five Mega Millions winning numbers drawn for field 1 (in any order), but not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a second prize of $175,000.

*(ii)* Third Prize: Mega Millions plays matching four of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a third prize of $5,000.

*(iii)* Fourth Prize: Mega Millions plays matching four of the five Mega Millions winning numbers drawn for field 1 (in any order) but not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a fourth prize of $150.

*(iv)* Fifth Prize: Mega Millions plays matching three of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a fifth prize of $150.

*(v)* Sixth Prize: Mega Millions plays matching two of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a sixth prize of $10.

*(vi)* Seventh Prize: Mega Millions plays matching three of the five Mega Millions winning numbers drawn for field 1 (in any order) and not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a seventh prize of $7.

*(vii)* Eighth Prize: Mega Millions plays matching one of the five Mega Millions winning numbers drawn for field 1 and the Mega Millions winning number drawn for field 2 shall be entitled to receive an eighth prize of $3.

*(viii)* Ninth Prize: Mega Millions plays matching no numbers of the five Mega Millions winning numbers drawn for field 1 but matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a ninth prize of $2.

*(ix)* Each Mega Millions second through ninth prize shall be paid in one payment.

(D) In a single drawing, a player may win in only one prize category per single Mega Millions play in connection with Mega Millions winning numbers, and shall be entitled only to the highest prize.

(E) For purpose of prize calculation with respect to any Mega Millions pari-mutuel prize, the calculation shall be rounded down so that prizes shall be paid in multiples of one dollar.

(F) With respect to the Mega Millions grand/jackpot prize, the prize amount paid shall be the advertised grand/jackpot prize amount. However, the advertised grand/jackpot prize amount is subject to change based on sales forecasts and/or actual sales. Additionally, this prize amount may be rounded up to the next highest affordable multiple of one million dollars, at the discretion of the party lotteries.

(G) Subject to the laws and rules governing each party lottery, the number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the directors, for promotional purposes. Such change shall be announced by public notice.

(H) Prize liability cap. Notwithstanding any provision in the rule to the contrary, should total prize liability (exclusive of jackpot prize carry forward) exceed 300 percent of draw sales or 50 percent of draw sales plus $50,000,000, whichever is less, (both hereinafter referred to as the "liability cap"), the second through fifth prizes shall

be paid on a pari-mutuel rather than guaranteed prize basis, provided, however, that in no event shall the pari-mutuel prize be greater than the guaranteed prize. The amount to be used for the allocation of such pari-mutuel prizes (two through five) shall be the liability cap less the amount paid for the jackpot prize and prize levels six through nine.

(g) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(h) Ticket purchases.

(1) Mega Millions tickets may be purchased in Texas only at a licensed location from a Texas Lottery retailer authorized by the lottery operations director to sell on-line tickets. No Mega Millions ticket purchased outside Texas may be presented to a Texas Lottery retailer for payment within Texas.

(2) Mega Millions tickets shall show the player's selection of numbers or Quick Pick (QP) numbers, election of the multiplier feature, Megaplier, boards played, drawing date, jackpot payment option, and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed. Neither a party lottery nor its sales agents shall be responsible for lost or stolen tickets.

(4) Except as provided in subsection (d)(2) of this section, Mega Millions tickets must be purchased using official Mega Millions playslips. Playslips which have been mechanically completed are not valid. Mega Millions tickets must be printed on official Texas Lottery paper stock and purchased at a licensed location through an authorized Texas Lottery retailer's terminal.

(5) In purchasing a ticket issued for Mega Millions, the player agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of the party lottery of the state in which the Mega Millions ticket is issued, and by directives and determinations of the director of that party lottery. Additionally, the player shall be bound to all applicable provisions in the Mega Millions Finance and Operations Procedures. The player agrees, as its sole and exclusive remedy that claims arising out of a Mega Millions ticket can only be pursued against the party lottery of ticket purchase. Litigation, if any, shall only be maintained within the state in which the Mega Millions ticket was purchased and only against the party lottery that issued the ticket. Nothing in this rule shall be construed as a waiver of any defense or claim the Texas Lottery may have in the event a player pursues litigation against the Texas Lottery, its officers, or employees.

(i) Drawings.

(1) The Mega Millions drawings shall be held at the time(s) and location set out in the multijurisdiction agreement.

(2) Mega Millions tickets will not be sold during the draw break for the Mega Millions game.

(3) Each drawing shall determine, at random, the six winning numbers in accordance with the Mega Millions drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the commission in accordance with the drawing procedures. The winning numbers shall be used in determining all Mega Millions winners for that drawing.

(4) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined immediately prior to a drawing and immediately after the drawing.

(j) The name and city of the winner of the jackpot prize, or second prize, will be disclosed in a news conference or in a news release and the winner may be requested to participate in a news conference. If a winner claims a Mega Millions jackpot or second prize as a legal entity, the entity shall provide the name of a natural person who is a principal of the legal entity. This natural person may be required to be available for appearance at any news conference regarding the prize and may be featured in any party lottery's releases.

(k) For winning Mega Millions tickets for which no claim or redemption is made within the specified claim period for each respective party lottery, the corresponding prize monies shall be returned to the other party lotteries in accordance with procedures for the reconciliation of prize liability pursuant to the multijurisdiction agreement and as may be agreed to from time to time by the directors of the party lotteries.

(l) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

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 October 16, 2003.

TRD-200306857
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 5, 2003
For further information, please call: (512) 344-5113

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# TITLE 22. EXAMINING BOARDS

## PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

### CHAPTER 361. ADMINISTRATION

### SUBCHAPTER A. GENERAL PROVISIONS

**22 TAC §361.13**

The Texas State Board of Plumbing Examiners adopts a new rule §361.13, regarding Board Committees and Enforcement Committee, without changes to the proposed text as published in the August 15, 2003 issue of the *Texas Register* (28 Tex Reg 6506).

New rule §361.13, which will reflect the requirements of §1301.258 of the Occupations Code, as amended by the 78th Legislature ("Plumbing License Law" or "Law"). The new rule states that the Board may establish Board committees made up of Board members only and an enforcement committee made up of Board staff members only. The new rule also sets forth the responsibilities of the Enforcement Committee to review and investigate complaints; conduct informal conferences; negotiate proposed settlements; oversee the preparation for contested cases; pursue cases at the State Office of Administrative Hearings; oversee the issuance of cease and desist orders, administrative penalties, criminal citations and the filing of injunctions; and review applicants for examination, registration

and licensing who have a criminal conviction history affected by Board Rule §363.2.

No comments were received regarding the proposed new rule.

The new rule §361.13 is adopted under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.251 and §1301.258. §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. §1301.258 authorizes the Board to establish Board committees made up of Board members only and an enforcement committee made up of Board staff members only. No other statute, article or code is affected by this new rule.

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 October 15, 2003.

TRD-200306820
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: November 4, 2003
Proposal publication date: August 15, 2003
For further information, please call: (512) 458-2145

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## SUBCHAPTER B. PETITION FOR ADOPTION OF RULES

### 22 TAC §361.25

The Texas State Board of Plumbing Examiners adopts the repeal of rule §361.25, which requires the Board to establish an enforcement committee made up of Board members and Board staff members, without changes, as published in the August 15, 2003 issue of the *Texas Register* (28 TexReg 6507).

The repeal of §361.25 is necessary because it conflicts with Chapter 1301, Occupations Code as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.258 and the proposed rule §361.13 Board Committees and Enforcement Committee. Both §1301.258 and the proposed rule §361.13 allow only Board staff members to be appointed to serve on the Enforcement Committee.

No comments were received regarding the proposed repeal.

The repeal of §361.25 is adopted under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.251. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. No other statute, article or code is affected by these amendments.

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 October 15, 2003.

TRD-200306822
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: November 4, 2003
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For further information, please call: (512) 458-2145

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### 22 TAC §361.28

The Texas State Board of Plumbing Examiners adopts the repeal of rule §361.28, which allows the Board's Chief Examiner and Chief Field Representative to review and approve applications for examination, licensure and registration submitted by individuals who have certain previous criminal convictions, without changes, as published in the August 15, 2003 issue of the *Texas Register* (28 TexReg 6507).

The repeal of §361.28 is necessary because it conflicts with Chapter 1301, Occupations Code as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.4522, the proposed rule §363.2 Consequences to the Applicant With Criminal Conviction and proposed rule §361.13 Board Committees and Enforcement Committee. §1301.4522, proposed rule §363.2 and proposed rule §361.13 require that only the Enforcement Committee may review applicants for examination, registration and licensure who have a criminal conviction(s).

No comments were received regarding the proposed repeal.

The repeal of §361.28 is adopted under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.251. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. No other statute, article or code is affected by these amendments.

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 October 15, 2003.

TRD-200306823
Robert L. Maxwell
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Effective date: November 4, 2003
Proposal publication date: August 15, 2003
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## CHAPTER 363. EXAMINATIONS

### 22 TAC §363.2

The Texas State Board of Plumbing Examiners adopts amendments to rule §363.2, which currently states that each applicant for an examination shall meet all examination requirements and pay any required fees, without changes to the proposed text as published in the August 15, 2003 issue of the *Texas Register* (28 TexReg 6508).

The amendments to §363.2 will specifically address the consequences to applicants for examination and renewal of a license or

registration who have criminal conviction(s). The amendments change the title of the Section and state how the Board will determine the fitness of those applicants to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections. The amendments specify the authority for the rule, how the Board will address currently incarcerated applicants, factors in determining whether a conviction relates to the occupation of plumbing and plumbing inspections, additional factors for the Board to consider in determining the fitness of applicants, responsibilities of applicants to obtain and provide information to the Board regarding the conviction(s), the governance of the Administrative Procedure Act in any proceedings before the Board to determine fitness, the guidelines that the Board shall establish to determine the fitness of applicants, the Board's Enforcement Committee review of applicants, the procedure that the applicants will follow to request a hearing before the State Office of Administrative Hearings and judicial review of the Board's decisions.

No comments were received regarding the proposed amendments.

The amendments to §363.2 are adopted under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.251, §1301.4521, §1301.253 and the rule it amends. §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. §1301.4521 requires the Board to adopt rules in compliance with the guidelines authorized by Chapter 53, Occupations Code relating to criminal convictions. §1301.253 requires the Board to set fees in amounts that are reasonable and necessary to cover the cost of administering the Law. The amendments to §363.2 are also adopted under and affect Chapter 53, Occupations Code relating to criminal convictions. The amendments to §363.2 are additionally adopted under and affect §411.122, Government Code (as amended by the 78th Legislature), which authorizes the Board to access the criminal history record information maintained by the Department of Public Safety and the Federal Bureau of Investigation, including the National Crime Information Center database. No other statute, article or code is affected by these amendments.

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 October 15, 2003.

TRD-200306821
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: November 4, 2003
Proposal publication date: August 15, 2003
For further information, please call: (512) 458-2145

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## CHAPTER 365. LICENSING AND REGULATION

### 22 TAC §365.12

The Texas State Board of Plumbing Examiners adopts the repeal of rule §365.12, which provides guidelines and procedures that the Board has followed for determining the fitness of applicants with criminal conviction(s) to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections, without changes, as published in the August 15, 2003 issue of the *Texas Register* (28 TexReg 6510).

The repeal of §365.12 is necessary because it conflicts with the proposed rule §363.2 Consequences to the Applicant With Criminal Conviction. §363.2 will provide a more thorough explanation of the procedures for the Board to follow when determining the fitness of individuals with criminal convictions in compliance with Chapter 53 of the Occupations Code and Chapter 1301, Occupations Code as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.4521.

No comments were received regarding the proposed repeal.

The repeal of §365.12 is adopted under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.251. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. No other statute, article or code is affected by the repeal.

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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Robert L. Maxwell
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Texas State Board of Plumbing Examiners
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# PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

## CHAPTER 371. EXAMINATIONS

### 22 TAC §371.3

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §371.3, regarding Qualifications of Applicants without changes to the proposed text that was published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3693). The text will not be republished.

The amendment is being adopted to change the heading to better clarify and reflect the content of the rule.

No comments were received in response to the proposed amendment.

The amendment is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the

regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendment implements Texas Occupations Code, §202.252.

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 October 16, 2003.

TRD-200306825
Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Effective date: November 5, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 305-7000

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## CHAPTER 375. RULES GOVERNING CONDUCT

**22 TAC §375.3, §375.14**

The Texas State Board of Podiatric Medical Examiners adopts amendments to §375.3, regarding Advertising and a new §375.14, regarding Reporting Change of Practice Address and/or Phone Number to the Board without changes to the proposed text that was published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3694). The text will not be republished.

The amendments are being adopted to better define what a podiatric physician may or may not do when advertising and removes references to testimonials. The new section sets specific time frames for notifying the board of an address change and sets penalties for non-compliance.

No comments were received in response to the proposed amendments and new section.

The amendments and new section are being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendments and new section implement Texas Occupations Code, §202.152 and §202.301.

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-200306826
Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Effective date: November 5, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 305-7000

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## CHAPTER 378. CONTINUING EDUCATION

**22 TAC §378.1**

The Texas State Board of Podiatric Medical Examiners adopts amendments to §378.1, regarding Continuing Education Required with changes to the proposed text that was published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3695). The words "be in compliance and" were added to subsection (m). The text will be republished.

The amendments will change the dates for continuing education cycles, allow CME credit for participating in podiatric medical reviewer training, and more fully describe the requirements for licensees deficient in continuing medical education hours.

No comments were received in response to the proposed amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendments implement Texas Occupations Code, §202.305.

*§378.1. Continuing Education Required.*

(a) Each person licensed to practice podiatric medicine in the State of Texas is required to have 30 hours of continuing education every two years for the renewal of the license to practice podiatric medicine. Two hours of the required 30 hours of annual continuing education (CME) may be a course, class, seminar, or workshop in Ethics. It shall be the responsibility of the podiatric physician to ensure that all CME hours being claimed to satisfy the 30 hour bi-annual requirement meet the standards for CME as set by the Board. One hour of CME is defined as a typical fifty-minute classroom instructional session or its equivalent

(b) A licensee shall receive 100% credit for each hour of training (one hour of training equals one hour of CME) for podiatric medical meetings and training sponsored by APMA, APMA affiliated organizations, TPMA, state, county or regional podiatric medical association podiatric medical meetings, university sponsored podiatric medical meetings, hospital podiatric medical meetings or hospital podiatric medical grand rounds, medical meetings sponsored by the Foot & Ankle Society or the orthopedic community relating to foot care, and others at the discretion of the Board.

(c) Cardiopulmonary Resuscitation (CPR) certification is eligible for up to three hours of CME credit and Advanced Cardiac Life Support (ACLS) certification for up to six hours of CME credit (credit can only be obtained for one, not both).

(d) If a podiatric physician has an article published (not just submitted) in a peer review journal, (s)he may receive one hour of CME

credit for the article, with credit for the article being provided only once, regardless of the number of times or the number of journals in which the article is published.

(e) If a podiatric physician attends and speaks at the same lecture, CME credit may be received only for attending the lecture.

(f) A licensee shall receive 50% credit for each hour of training (one hour of training equals one half hour of CME) for non-podiatric medical sponsored meetings that are relative to podiatric medicine. The yardstick used to determine whether the training is "relative" to podiatric medicine is; "will the training enhance the knowledge and abilities of the podiatric physician in terms of improved quality and delivery of patient care?" Fifty percent credit shall also be assigned to hospital grand rounds, hospital CME programs, corporate sponsored meetings, and meetings sponsored by the American Medical Association, the orthopedic community, the American Diabetes Association, the Nursing Association, the Physical Therapy Association, and others at the discretion of the Board.

(g) Attendance in a mandatory Podiatric Medical Reviewer initial training course will receive credit for four CME hours.

(h) Podiatric Medical Reviewers will receive one CME hour per case reviewed. A maximum of four CME hours per biennium are allowed for case reviews.

(i) These hours of continuing education must be obtained in the 24 month period immediately preceding the year for which the license was issued. The two-year period will begin on November 1 and end on October 31 two years later. The year in which the 30-hour credit requirement must be completed after the original license is issued is every odd-numbered year if the original license was issued in an odd-numbered year and is every even-numbered year if the original license was issued in an even-numbered year. A licensee who completes more than the required 30 hours during the preceding CME period may carry forward a maximum of 10 hours for the next CME period.

(j) Documentation of CME courses shall be made available to the Board upon request, but should not be sent to the Board via facsimile, or mailed with the annual license renewal form. Each licensee shall maintain the licensee's CME records at the licensee's practice location for four years, evidencing completion of the CME programs completed by the licensee. The Board shall conduct random checks of licensee CME documentation to ensure compliance with this rule.

(k) A small percentage of podiatric physicians who renew their licenses will be required to produce proof of completion of the CME hours they affirmed obtaining on their annual license renewal notice. The licensees to be reviewed will be chosen randomly out of the pool of annual license renewal forms. Once a licensee has been randomly chosen for the CME audit, he/she will receive a letter requiring the licensee to submit to the Board proof of the hours claimed on the annual renewal form. Original documents will not be required; copies of certificates and forms will be sufficient.

(l) If the licensee does not comply with the request for CME documentation within 30 days of receipt of the letter, or if the licensee is unable to provide proof of the hours claimed on the annual renewal form, the licensee will be investigated by the Board. If the investigation reveals that the requirement was not met, the licensee may be disciplined. The penalty for non-compliance with the bi-annual CME requirement shall be a letter of reprimand and a minimum $2500 administrative penalty per violation up to the maximum allowed by law.

(m) Licensees that are deficient in CME hours must complete all deficient CME hours and present year CME requirements in order to be in compliance and maintain licensure.

(n) The Board may assess the continuing education needs of a licensee and require the licensee to attend continuing education courses specified by the Board.

(o) Continuing education obtained as a part of a disciplinary action is not acceptable credit towards the total of 30 hours required every two years.

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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Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Effective date: November 5, 2003
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For further information, please call: (512) 305-7000

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# PART 23. TEXAS REAL ESTATE COMMISSION

## CHAPTER 535. GENERAL PROVISIONS
## SUBCHAPTER A. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

**22 TAC §535.1**

The Texas Real Estate Commission (TREC) adopts amendments to Chapter 535, concerning provisions of the Real Estate License Act and §535.1, concerning when a real estate license is required without changes to the proposed text as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7154) and will not be republished.

The amendment to Chapter 535 changes the title to General Provisions to more accurately reflect the content of the chapter. The amendments to §535.1 change the cites to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act (the Act), and repealed Article 6573a, Texas Civil Statutes, effective June 1, 2003. The amendments are also adopted in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning general provisions relating to the requirements of licensure.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

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-200306907
Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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## SUBCHAPTER B. DEFINITIONS

### 22 TAC §§535.12, 535.13, 535.16, 535.17, 535.21

The Texas Real Estate Commission (TREC) adopts amendments to §535.12, concerning general definitions, §535.13, concerning dispositions of real estate, §535.16, concerning listings, §535.17, concerning appraisals, and §535.21, concerning unimproved lot sales; listing publications without changes to the proposed text as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7155) and will not be republished.

The amendments to §§535.12, 535.13, 535.16, 535.17, and 535.21 change the cites to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act (the Act), and repealed Article 6573a, Texas Civil Statutes, effective June 1, 2003. The amendments are also adopted in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning definitions.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

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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Loretta DeHay
General Counsel
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For further information, please call: (512) 465-3900

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## SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

### 22 TAC §535.31

The Texas Real Estate Commission (TREC) adopts amendments to §535.31, concerning attorneys at law without changes to the proposed text as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7156) and will not be republished.

The amendments to §535.31 change the cites to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act (the Act), and repealed Article 6573a, Texas Civil Statutes, effective June 1, 2003. The amendments are also adopted in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning exemptions to requirements of licensure.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of C hapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

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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Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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## SUBCHAPTER D. THE COMMISSION

### 22 TAC §535.41, §535.42

The Texas Real Estate Commission (TREC) adopts amendments to §535.41, concerning procedures and §535.42, concerning jurisdiction and authority without changes to the proposed text as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7156) and will not be republished.

The amendments change the cites to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act (the Act), and repealed Article 6573a, Texas Civil Statutes, effective June 1, 2003. The amendments are also adopted in connection with

TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning general provisions relating to the commission.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

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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Loretta DeHay
General Counsel
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## SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

**22 TAC §535.51, §535.53**

The Texas Real Estate Commission (TREC) adopts amendments to §535.51, concerning general requirements and §535.53, concerning corporations and limited liability companies. Section 535.51 is adopted with changes to the proposed text as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7157). Section 535.53 is adopted without changes and will not be republished.

The amendments to §535.51 are adopted in connection with the passage of House Bill 1508 by the 78th Legislature (2003) which exempted the current $20 salesperson change of sponsorship or return to active status fee for requests associated with an original salesperson license. The amendments to §535.51 adopt by reference three revised salesperson application forms to delete reference to a salesperson sponsorship fee of $20, and a renewal application for broker license by a limited liability company to amend minor typographical errors in the form. The adopted text differs from the proposed text to adopt by reference a revised Application of Currently Licensed Real Estate Broker for Salesperson License form to delete references in the form to a salesperson sponsorship fee of $20, to renumber the revised form number in subsection (e)(9), and to reflect the current salesperson application fee of $50 in all three salesperson application forms. Based on staff input, the commission has decided not to increase the salesperson application fee from $50 to $70 as proposed in the August 29, 2003, issue of the *Texas Register*. The changes the commission has determined to make regulate no new parties, affect no new subjects of regulation, are based on staff input at the October 13, 2003 commission meeting, and conform the additional form to the requirements of House Bill 1508.

The amendments to §535.53 change the cites to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act, and repealed Article 6573a, Texas Civil Statutes, effective June 1, 2003. The amendments are also adopted in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning requirements for licensure.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

*§535.51. General Requirements.*

(a) A person who wishes to be licensed by the commission must file an application for the license on the form adopted by the commission for that purpose. Prior to filing the application, the applicant must pay the required fee for evaluation of the education completed by the person and must obtain a written response from the commission showing the applicant meets current education requirements for the license.

(b) If the commission develops a system whereby a person may electronically file an application for a license, a person who has previously satisfied applicable education requirements and obtained an evaluation from the commission also may apply for a license by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. If the person is an individual, the person must provide the commission with the person's signature prior to issuance of a license certificate. The person may provide the signature prior to the submission of an electronic application.

(c) The commission shall return applications to applicants when it has been determined that the application fails to comply with one of the following requirements.

(1) The applicant is not 18 years of age.

(2) The applicant does not meet any applicable residency requirement.

(3) An incorrect filing fee or no filing fee is received.

(4) The application is submitted in pencil.

(5) The applicant is not a citizen of the United States or a lawfully admitted alien.

(6) The applicant has not obtained an evaluation from the commission showing the applicant meets education requirements or experience requirements have not been satisfied.

(d) An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) the applicant fails to satisfy an examination requirement within six months from the date the application is filed;

(2) the applicant, having satisfied any examination requirement, fails to submit a required fee within sixty (60) days after the commission makes written request for payment;

(3) the applicant, having satisfied any examination requirement, fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation.

(e) The commission adopts by reference the following forms approved by the commission which are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for a Real Estate Broker License, TREC Form BL-7;

(2) Application for a Real Estate Broker License by a Corporation, TREC Form BLC-4;

(3) Application for Late Renewal of A Real Estate Broker License, TREC Form BLR-6;

(4) Application for Late Renewal of Real Estate Broker License Privileges by a Corporation, TREC Form BLRC-4;

(5) Application for Real Estate Salesperson License, TREC Form SL-9;

(6) Application for Late Renewal of Real Estate Salesperson License, TREC Form SLR-8;

(7) Application for Moral Character Determination, TREC Form MCD-4;

(8) Application for Real Estate Broker License by a Limited Liability Company, TREC Form BLLLC-5;

(9) Application of Currently Licensed Real Estate Broker for Salesperson License, TREC Form BSL-5; and

(10) Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, TREC Form BLRLLC-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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TRD-200306911
Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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## SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

**22 TAC §§535.61 - 535.66**

Texas Real Estate Commission (TREC) adopts amendments to §535.61, concerning examinations, §535.62, concerning acceptable courses of study, §535.63, concerning education and experience requirements for a license, §535.64, concerning accreditation of schools and approval of courses and instructors; §535.65, concerning changes in ownership or operation of school; presentation of courses, advertising, and records, and §535.66, concerning payment of annual fee, audits, investigations and enforcement actions without changes to the proposed text as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7158) and will not be republished.

The amendments change the cites to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act (the Act), and repealed Article 6573a, Texas Civil Statutes effective June 1, 2003. The amendment to §535.64(g) is adopted in connection with the passage of House Bill 1508 by the 78th Legislature (2003), setting the maximum fee for application for real estate instructor and adopts by reference a revised application form to reflect an instructor application fee of $25. The amendment to §535.65(i) permits a school to provide a roster of students who take alternate delivery method courses 10 days after the end of the month in which the course was taken. The amendments are also adopted in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning education, experience, educational programs, time periods and type of license.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

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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Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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## SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

**22 TAC §§535.71 - 535.73**

The Texas Real Estate Commission (TREC) adopts amendments to §535.71, concerning mandatory continuing education:

approval of providers, courses and instructors, §535.72, concerning presentation of courses, advertising, and records, and §535.73, concerning compliance and enforcement without changes to the proposed text as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7160) and will not be republished.

The amendments change the cites to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act, and repealed Article 6573a, Texas Civil Statutes effective June 1, 2003. The amendments to §535.71 adopt by reference MCE form 9-6 to change a cite referenced in the form to the relevant Occupations Code provision and MCE form 10-1 to update the form. The amendments to §535.72 change two references to the updated form adopted by §535.71. The amendments are also adopted in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning mandatory continuing education.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

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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Loretta DeHay
General Counsel
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## SUBCHAPTER I. LICENSES

### 22 TAC §535.91

The Texas Real Estate Commission (TREC) adopts amendments to §535.91 concerning renewal applications with changes to the proposed text as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7162). The amendments to §535.91 adopt by reference two new application renewal forms to modify and update the forms for clarity. The current renewal form is mailed to real estate salespersons and brokers to use for a timely renewal of their licenses. The commission adopts separate renewal forms for brokers and salespersons to provide more accurate and individualized information to each license type. The amendments also change the cites in the rule to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act, and repealed Article 6573a, Texas Civil Statutes effective June 1, 2003. The adopted text differs from the proposed text by changing the year of adoption from 2003 to 2004.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

*§535.91. Renewal Applications.*

(a) Each real estate license expires on the date shown on the face of the license certificate issued to the licensee. The licensee has the responsibility to apply for renewal of a license by making proper application, paying the fee set by the commission and completing mandatory continuing education (MCE) courses within the time periods required by the Act, §1101.455. The commission shall mail a renewal application form for an active broker or an inactive licensee to the last known permanent mailing address of the broker or licensee as shown in the commission's computerized records. The commission shall mail a renewal application form for an active salesperson to the permanent mailing address of the salesperson's sponsoring broker. The commission shall mail the form three months before the expiration of the current license. Each licensee shall furnish a permanent mailing address to the commission and report all subsequent address changes within 10 days after a change of address. If a licensee fails to provide a permanent mailing address, the last known mailing address provided by the licensee will be deemed to be the licensee's permanent mailing address. Applications must be made on the current renewal application form approved by the commission accompanied by the required fee. Failure to receive a license renewal application form does not relieve a licensee of the obligation to obtain the appropriate form and to apply for renewal of a license. A licensee shall provide information requested by the commission in connection with an application to renew a license within 30 days after the commission requests the information. Failure to provide information requested by the commission in connection with a renewal application within the required time is grounds for disciplinary action under the Act, §1101.656.

(b) The Texas Real Estate Commission adopts by reference Renewal Application Forms SR 1-0 and BR 1-0, approved by the commission in 2004. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

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 October 20, 2003.

TRD-200306915

Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: January 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 465-3900

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## SUBCHAPTER J. FEES

### 22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts amendments to §535.101, concerning fees paid by licensees and applicants with changes to the proposed text as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7164).

The amendments to §535.101 are adopted in connection with the passage of H.B. 1508 by the 78th Legislature (2003), increasing various fees, including setting a maximum fee of $75 for the filing of an original application for a real estate salesperson license, setting a maximum fee of $20 for preparing a license history, and setting a new maximum fee of $40 for the filing of a core or continuing education instructor application. The amendments also change the cites to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act (the Act), and repealed Article 6573a, Texas Civil Statutes, effective June 1, 2003.

Section 535.101 is amended to reflect a $20 fee for preparing a license history certification and a $25 fee for the filing of a core or continuing education instructor application. The adopted text differs from the proposed text to eliminate the proposed increase from $50 to $70 for the fee for a salesperson application, based on input from the TREC Administrator at the October 13, 2003 commission meeting. The changes the commission has determined to make regulate no new parties and affect no new subjects of regulation. The salesperson application fee would remain $50.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

*§535.101. Fees.*

(a) Fees for the issuance of a license due to a change of address, additional place of business or change of sponsoring broker are due when requests for such licenses are received. A change of address or name submitted with an application to renew a license, however, does not require payment of a fee in addition to the fee for renewing the license. If the commission receives a request for issuance of a license certificate which requires payment of a fee, and the appropriate fee was not filed with the request, the commission shall return the request and notify the person filing the request that the person must pay the fee before the certificate will be issued. The commission may require written proof of a licensee's right to use a different name prior to issuing a license certificate reflecting a change of name. As used in this section, the term "license" includes a certificate of registration.

(b) The commission shall charge and collect the following fees:

(1) a fee of $75 for the filing of an original application for a real estate broker license;

(2) a fee of $33.50 for annual renewal of a real estate broker license;

(3) a fee of $50 for the filing of an original application for a real estate salesperson license;

(4) a fee not to exceed $31.50 for annual renewal of a real estate salesperson license;

(5) a fee of $59 for taking a license examination;

(6) a fee of $20 for filing a request for a license for each additional office or place of business;

(7) a fee of $20 for filing a request for a license for a change of place of business change of name, return to active status or change of sponsoring broker;

(8) a fee of $20 for filing a request to replace a license lost or destroyed;

(9) a fee of $400 for filing an application for accreditation of an education program under Texas Occupations Code, Section 1101, (the Act), §1101.301;

(10) a fee of $200 a year for operation of a real estate education program under the Act, §1101.301;

(11) a fee of $20 for transcript evaluation;

(12) a fee of $20 for preparing a license history;

(13) a fee of $25 for the filing of an application for a moral character determination; and

(14) a fee of $25 for the filing of an instructor application.

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 October 20, 2003.

TRD-200306916
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: January 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 465-3900

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## SUBCHAPTER K. PLACE OF BUSINESS

### 22 TAC §535.113

The Texas Real Estate Commission (TREC) adopts the repeal of §535.113, concerning display of licenses. It is being adopted without changes as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7163).

The repeal is adopted in connection with the passage of H.B. 1508 by the 78th Legislature (2003), which, in part, repealed the

statutory provision that required a broker to display the broker's and the sponsored salespersons' licenses at the broker's place of business. Residential locators are still required to display their licenses.

No comments were received regarding the repeal.

The repeal is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this repeal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the repeal.

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 October 20, 2003.

TRD-200306917
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: January 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 465-3900

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## CHAPTER 541. RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53

**22 TAC §541.1**

The Texas Real Estate Commission (TREC) adopts amendments to chapter 541 concerning rules relating to the provisions of Texas Occupations Code Chapter 53 and §541.1 concerning criminal offense guidelines without changes to the proposed text as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7164) and will not be republished.

The amendments change the cites to the relevant statutory provisions of Chapter 53, a nonsubstantive codification of article 6252-13c, Texas Civil Statutes effective September 1, 1999. The amendments are also adopted in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning criminal offense guidelines.

No comments were received regarding the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments. Rules Relating to the Provisions of Texas Occupations Code, Chapter 53

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 October 20, 2003.

TRD-200306918
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: January 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 465-3900

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# TITLE 34. PUBLIC FINANCE

## PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

## CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
## SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

**34 TAC §41.42**

The Teacher Retirement System of Texas (TRS) adopts amendments to §41.42 concerning payment of supplemental compensation to active employees who are TRS contributing members. §41.42 is adopted with changes to the text as published in the July 11, 2003 issue of the *Texas Register* (28 TexReg 5495).

The amendments to §41.42 change the supplemental compensation amounts, define full-time, part-time, and professional employees, and specify which classifications of employees are eligible to receive the supplemental compensation effective September 1, 2003 in compliance with House Bill 3459, 78th Legislature, Regular Session, 2003.

TRS received a number of written public comments concerning the definition of "professional employee." These comments were primarily from public school counselors and librarians. TRS also received written comments from Senator John Carona and the Texas Federation of Teachers concerning this definition. Finally, TRS received written comments from the Texas Association of School Boards concerning this definition and the definition of "part-time employee."

A public hearing on the proposed rule was held on September 24, 2003. TRS received written and oral comments from the Texas State Teachers Association and the Texas Federation of Teachers. TRS also received 10 oral comments from public school employees and individuals from organizations that represent public school employees.

A summary of both the written and oral comments related to the proposed rule and TRS's responses follow:

Comment: Concerning §41.42(d) and (e), librarians and counselors request that they be treated like teachers and be made eligible for the supplemental compensation because (1) they are on the same salary scale, same contract period, and same day schedule as teachers; (2) they provide direct instructional contact with students; and (3) they must have at least three years of teaching experience before becoming either a counselor or librarian. They also claim that the $50,000 eligibility threshold penalizes those public school employees who have worked longer in public education. They also argue that they do not receive the same salaries or additional benefits that administrators receive.

Response: In response to this comment, TRS is eliminating the $50,000 threshold in §41.42(d)(4). Similarly, TRS is eliminating the introductory phrases in §41.42(d)(1), (2), and (3), as well as subsection (e), because an exception to subsection (d) is no longer necessary.

Comment: Several commenters requested that, in addition to counselors and librarians, public school nurses, educational diagnosticians, therapists, and other employees "previously overlooked" be considered eligible for the supplemental compensation because only administrative professionals and not non-administrative professionals were intended to be "professional employees" and thus ineligible to receive the supplemental compensation.

Response: TRS is eliminating subsections §41.42(d) and (e) and the introductory phrases in §41.42(d)(1), (2), and (3).

Comment: One commenter requested that bus drivers who are considered "full-time employees" for purposes of TRS membership also be considered "full-time employees" for purposes of the supplemental compensation.

Response: TRS declines to make this requested change. Bus drivers are eligible for TRS membership if they drive at least one TEA-approved route per day. TRS intends to be consistent in implementing the definitions for supplemental compensation and treat all workers the same based on the number of hours worked, as determined by their employer. Additionally, TRS membership is funded in part by employee contributions based on their salaries, while supplemental compensation is additional funding from the state to the employees. There is no requirement that the definition of full-time for purposes of TRS membership and supplemental compensation be the same, and the different funding mechanism for supplemental compensation supports a different definition of full-time.

In addition to the changes addressed in the previous paragraphs, TRS has made the following changes to the section as proposed:

TRS has modified §41.42(d) to clarify that the definitions apply for the entire fiscal year. TRS has changed §41.42(d)(3) to clarify the wording concerning who falls within that classification. TRS also modified new §41.42(e) to state that TRS's distribution of the supplemental compensation is subject to the availability of funds appropriated for purposes of the supplemental compensation. These changes are necessary to clarify the administration of the supplemental compensation in light of the changes to the definition of "professional employee."

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for, among other things, the transaction of business of the board. The amendments are also adopted under Insurance Code §1580.002(a), which authorizes TRS to adopt rules to administer the supplemental compensation program and House Bill 3459, 78th Legislature, Regular Session, 2003, §57, which modifies the supplemental compensation amounts and authorizes TRS to define professional employees. No other codes are affected.

*§41.42. Payment of Supplemental Compensation.*

(a) For each designated report month, entities eligible to receive and to hold in trust supplemental compensation under Insurance Code Article 3.50-8 or Insurance Code Chapter 1580 ("entity" or "entities") shall report to the Texas Education Agency (TEA), in the manner prescribed by TRS, the number of full-time and part-time employees, as defined herein, eligible to receive supplemental compensation and the total number of professional employees, as defined herein, as determined by the entity in accordance with requirements established by TRS. TEA must receive each monthly report by 5:00 p.m. Central Time on the 10th calendar day of each month, or, if that date is not a business day, by 5:00 p.m. Central Time on the first business day after the 10th calendar day of the month. TEA or TRS may dispute, seek verification of, or conduct an investigation regarding the reported number of participating members at any time after receiving the report.

(b) For purposes of this section, an individual is employed as a full-time employee if the individual meets the definition of "employee" under Article 3.50-8 or Chapter 1580, Insurance Code, the individual is not a professional employee, and the individual works for an entity or any combination of entities for 30 or more hours each week.

(c) For purposes of this section, an individual is employed as a part-time employee if the individual meets the definition of "employee" under Article 3.50-8 or Chapter 1580, Insurance Code, the individual is not a professional employee, and the individual works for an entity or any combination of entities for less than 30 hours each week.

(d) For purposes of this section during state fiscal year 2004, an individual is a professional employee if:

(1) 50% or more of the individual's time is reported under any combination of the following role identifications in the Public Education Information Management System (PEIMS), or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this paragraph:
Figure: 34 TAC §41.42(d)(1)

(2) or the individual is employed by a regional education service center and 50% or more of the individual's time is reported under any combination of the following role identifications in PEIMS, or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this paragraph:
Figure: 34 TAC §41.42(d)(2)

(3) or regardless of how the individual's time is reported in PEIMS, 50% or more of the individual's time is reported in a role that is substantially similar to a role set out in paragraph (1) or (2) of this subsection, as determined by the reporting entity or combination of entities.

(e) If TEA receives the report on or before the deadline and neither TRS nor TEA seeks verification of, investigates, or otherwise disputes information in the report upon initial review, subject to later adjustment if TRS determines that there are errors in the report, TRS will remit to the entity, subject to the availability of funds appropriated for this purpose:

(1) an amount equal to the number of full-time employees, reported by the entity for the reporting month divided by 12 and multiplied by $500;

(2) an amount equal to the number of part-time employees reported by the entity for the reporting month divided by 12 and multiplied by $250.

(f) If a report is submitted after the deadline under this section, remittance to the reporting entity will be delayed by at least one month even if neither TEA nor TRS disputes or seeks verification of the numbers reported. In the first month an individual becomes eligible for the supplement, all entities must begin to distribute the appropriate monthly supplement to each eligible individual employed by the entity, regardless of whether reports are submitted in accordance with the deadlines and other requirements of this section. Entities must continue to make the appropriate monthly distribution to eligible individuals for so long as such individuals are employed, as determined by the entity, for at least one day of the applicable month, provided that the individual did not receive a monthly distribution from another entity for employment that occurred earlier in the same month. Entities must submit proposed adjustments to previously reported numbers through September 30 of the fiscal year following the reporting month. TRS or TEA may make adjustments to previously reported numbers and may make a corresponding increase or decrease in funds that would otherwise be remitted to an entity, at any time after receipt of a report.

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 October 14, 2003.

TRD-200306759
Conni Brennan
General Counsel
Teacher Retirement System of Texas
Effective date: November 3, 2003
Proposal publication date: July 11, 2003
For further information, please call: (512) 542-6115

# 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 Department of Health

**Title 25, Part 1**

The Texas Department of Health (department) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 1, Texas Department of Health, Chapter 289, Radiation Control, Subchapter D, General, §289.204, and Subchapter E, Registration Regulations, §289.232.

This review is in accordance with the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the department as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200306983
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 22, 2003

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Texas Department of Human Services

**Title 40, Part 1**

The Texas Department of Human Services (DHS) files this notice of intention to review 40 TAC, Chapter 52 (Emergency Response Services), in accordance with the Government Code, §2001.039. During this review, DHS will assess whether the reasons for adopting this chapter continue to exist.

As required by §2001.039, DHS will accept comments on the proposed review for 30 days following the publication of this notice in the *Texas Register*. Any questions or written comments should be directed to Frances Rickard, Rules and Handbooks Unit-002, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030 or (512) 438-4162.

TRD-200306892
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: October 17, 2003

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Texas Water Development Board

**Title 31, Part 10**

The Texas Water Development Board (the board) files this notice of intent to review 31 TAC, Part X, Chapter 354, Memoranda of Understanding, in accordance with the Texas Government Code, §2001.039. The board finds that the reason for adopting the chapter continues to exist.

The board concurrently proposes amendments to §354.1 and §354.4. The amendments are proposed for cleanup and clarification.

As required by §2001.039 of the Texas Government Code, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in Chapter 354 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Srin Surapanani, Attorney, General Counsel Office, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax @ 512/463-5580.

TRD-200306776
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: October 15, 2003

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## Adopted Rule Reviews

Texas Department of Human Services

**Title 40, Part 1**

The Texas Department of Human Services (DHS) has completed its review of the rules in Chapter 47 (Primary Home Care) and Chapter 48 (Community Care for Aged and Disabled). The notice of intention to review was published in the May 9, 2003, issue of the *Texas Register* (28 TexReg 3850). DHS received no comments concerning the review.

During its review of Chapter 47, DHS determined that the reasons for adopting Chapter 47 continue to exist. The rules in Chapter 47 are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

During its review of Chapter 48, DHS determined to repeal Subchapters E, G, L, M, and N so that the rules in those chapters could be rewritten in plain English and placed in their own chapters. The repeal of Subchapter G (Program for All-Inclusive Care for the Elderly (PACE)) and new rules in Chapter 60 were proposed in the September 5, 2003, issue of the *Texas Register*. The repeals of Subchapters E and L (Client-Managed Attendant Services and Minimum Standards for Agencies Contracted To Provide Special Services to Persons With Disabilities) and new rules in Chapters 44 and 58 are proposed elsewhere in this issue of the *Texas Register*. The repeals of Subchapters M and N (Home-Delivered Meals and Support Documents) and new rules in Chapter 55 will be proposed in a subsequent issue of the *Texas Register*. Until the repeals and new chapters are in effect, the reasons for adopting the rules in Chapter 48 continue to exist and they are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes DHS's review of 40 TAC, Chapters 47 and 48, as required by the Government Code, §2001.039.

TRD-200306893
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: October 17, 2003

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## Texas State Board of Podiatric Medical Examiners

**Title 22, Part 18**

The Texas State Board of Podiatric Medical Examiners adopts the rule review which was published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3742). The Board reviewed Chapters 378 - 382 of Title 22 of the Texas Administrative Code.

No public comments were received regarding the rule review.

The Board has determined that the reasons for adopting the rules contained in the reviewed chapters continue to exist, and the Board re-adopts the rules. However, the Board has proposed changes. The proposed changes to the rules will appear in the "Proposed Rules" section of the *Texas Register*.

The Board adopts this rule review under the authority of Texas Government Code, §2001.039, which requires all agencies to review rules periodically to determine whether the reasons for the adoption of the rules continue to exist. The Board obtains the authority to adopt rules from Texas Occupations Code, §202.15, which provides the Board with the authority to adopt rules that are reasonable or necessary, that are consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

TRD-200306827
Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Filed: October 16, 2003

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## Texas Workers' Compensation Commission

**Title 28, Part 2**

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the August 22, 2003 issue of the *Texas Register*, (28 TexReg 6957), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of these rules continues to exist. Therefore, the Commission readopts Chapter 103. If the Commission determines that the rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

CHAPTER 103. AGENCY ADMINISTRATION

§103.1. General Provisions.

§103.2. Employee Training and Education Program.

§103.3. No Effect on At-Will Status.

§103.100. Historically Underutilized Businesses.

§103.101. Vendor Protest Procedures.

§103.300. Purpose.

§103.301. Applicability.

§103.302. Definitions.

§103.303. Prerequisites to Suit.

§103.304. Sovereign Immunity.

§103.305. Notice of Claim of Breach of Contract.

§103.306. Agency Counterclaim.

§103.307. Duty to Negotiate.

§103.308. Timetable.

§103.309. Conduct of Negotiation.

§103.310. Settlement Approval Procedures.

§103.311. Settlement Agreement.

§103.312. Costs of Negotiation.

§103.313. Request for Contested Case Hearing.

§103.314. Mediation Timetable.

§103.315. Mediation of Contract Disputes.

§103.316. Qualifications and Immunity of the Mediator.

§103.317. Confidentiality of Mediation and Final Settlement Agreement.

§103.318. Costs of Mediation.

§103.319. Settlement Approval Procedures.

§103.320. Initial Settlement Agreement.

§103.321. Final Settlement Agreement.

§103.322. Referral to the State Office of Administrative Hearings

§103.400. Fleet Vehicle Management Program.

TRD-200306949

Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: October 20, 2003

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In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the June 27, 2003 issue of the *Texas Register*, (28 TexReg 4937), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of these rules continues to exist. Therefore, the Commission readopts Chapter 112. If the Commission determines that the rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

CHAPTER 112. SCOPE OF LIABILITY FOR COMPENSATION

§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.

TRD-200306948
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: October 20, 2003

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In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the August 1, 2003 issue of the *Texas Register*, (28 TexReg 6029), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of these rules continues to exist. Therefore, the Commission readopts Chapter 130. If the Commission determines that the rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS

§130.1. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment.

§130.2. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by the Treating Doctor.

§130.3. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by a Doctor other than the Treating Doctor.

§130.4. Presumption that Maximum Medical Improvement (MMI) has been Reached and Resolution when MMI has not been Certified.

§130.5. Entitlement and Procedure for Requesting Designated Doctor Examinations related to Maximum Medical Improvement and Impairment Rating.

§130.6. Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings.

§130.7. Acceleration of Impairment Income Benefits.

§130.8. Initiating Payment of Impairment Income Benefits.

§130.10. Commission Review of Employment Status during the Impairment Income Benefits Period.

§130.11. Agreement for Monthly Payment of Impairment Income Benefits.

§130.100. Applicability.

§130.101. Definitions.

§130.102. Eligibility for Supplemental Income Benefits; Amount.

§130.103. Determination of Entitlement or Non-entitlement for the First Quarter.

§130.104. Determination of Entitlement or Non-entitlement for Subsequent Quarters.

§130.105. Failure to Timely File Application for Supplemental Income Benefits; Subsequent Quarters.

§130.106. Permanent Loss of Entitlement to Supplemental Income Benefits.

§130.107. Payment of Supplemental Income Benefits.

§130.108. Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney Fees.

§130.109. Reinstatement of Entitlement if Discharged with Intent To Deprive of Supplemental Income Benefits.

§130.110. Return to Work Disputes During Supplemental Income Benefits; Designated Doctor.

TRD-200306950
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: October 20, 2003

♦ ♦ ♦

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178,

76th Legislature, and pursuant to the notice of intention to review published in the June 27, 2003 issue of the *Texas Register*, (28 TexReg 4937), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of these rules continues to exist. Therefore, the Commission readopts Chapter 134. If the Commission determines that the rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

§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.

§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.

§134.401. Acute Care Inpatient Hospital Fee Guideline.

§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.

§134.600. Preauthorization, Concurrent Review, and Voluntary Certification of Health Care.

§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.

§134.803. Calculating Interest for Late Payment on Medical Bills and Refunds.

§134.900. Medical Benefit Review and Audit.

TRD-200306951
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: October 20, 2003

♦ ♦ ♦

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the July 18, 2003 issue of the *Texas Register*, (28 TexReg 5668), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of these rules continues to exist. Therefore, the Commission readopts Chapter 164. If the Commission determines that the rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

CHAPTER 164. Hazardous Employer Program

§164.1. Criteria for Identifying Hazardous Employers.

§164.2. Notice to Hazardous Employers.

§164.3. Safety Consultation for Public Employers.

§164.4. Formulation of Accident Prevention Plan for Public Employers.

§164.5. Follow-up Inspection for Public Employers by the Division.

§164.6. Report of Follow-up Inspection, Public Employers.

§164.7. Removal of Public Employers from Hazardous Employer Status.

§164.8. Continuation of Hazardous Employer Status, Public Employers.

§164.9. Approval of Professional Sources for Safety Consultations.

§164.10. Removal from the List of Approved Professional Sources.

§164.11. Request for Safety Consultation from the Division.

§164.12. Reimbursement of Division for Services Provided to Hazardous Employer.

§164.14. Values Assigned for Computation of Hazardous Employer Identification.

§164.15. Administrative Reviews and Hearings Regarding Identification as a Hazardous Employer.

§164.16. Removal of Private Employers from Hazardous Employer Status.

§164.17. Availability of OSHCON Services.

§164.18. Severability.

TRD-200306952
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: October 20, 2003

♦ ♦ ♦

# 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: 16 TAC §25.474(e)(7)

LETTER OF AUTHORIZATION
REP name and license number:_____
Customer billing name: _____
Customer billing address: _____
Customer service address: _____
City, state, zip code: _____
ESI ID, if available: _____

If applicable, name of individual legally authorized to act for customer and relationship to customer: _____
Telephone number of individual authorized to act for customer: _____

____By initialing here, I acknowledge that I have read and understand the terms of service for the product for which I am enrolling.

____By initialing here, I acknowledge that I understand that the price I am agreeing to is ____cents per kWh, the contract term that I am agreeing to is _____, that I will be required to pay a deposit in the amount of $_____in order to establish service, that I prefer to receive information from my REP in English/Spanish (circle one), and that there is a penalty for early cancellation of _____as specified by the terms of service.

____By initialing here and signing below, I am authorizing (name of new REP) to become my new retail electric provider and to act as my agent to perform the necessary tasks to establish my electric service account with (name of new REP). This authorization to switch my provider of electric service extends to the following locations (list each service address):

_____
_____

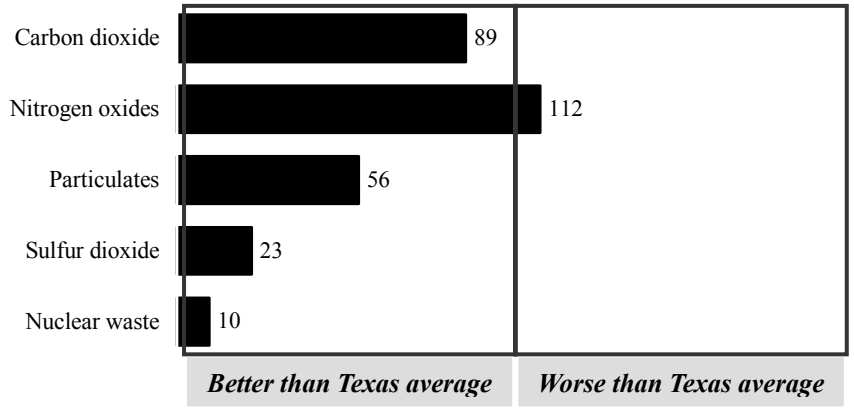
**I have read and understand this Letter of Authorization and the terms of service that describe the service I will be receiving. I am at least eighteen years of age and legally authorized to select or change retail electric providers for the service address(s) listed above.**

Signed: _____ Date:_____

**You have the right to review and cancel the contract within three federal business days, after receiving the terms of service, without penalty. You will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission before your electric service is switched to the REP.**

Figure: 16 TAC §25.475(f)(6)

**Electricity Facts**
[Name of REP], [Name of Product] [Service area *(if applicable)*]
as of [Date]

| | |
|---|---|
| ***Electricity price*** | Average monthly use: 500kWh 1,000kWh 1,500 kWh<br>**Average price per kilowatt-hour: [x.x]¢ [x.x]¢ [x.x]¢**<br><br>This price disclosure is an example based on [criteria used to construct the example] -- your average price for electric service will vary according to [relevant variation]. See the Terms of Service document for actual prices.<br>[If applicable] Price fixed for [xx] months.<br>[If applicable] On-peak [season or time]:[xxx]<br>[If applicable] Average on-peak price per kilowatt-hour: [x.x]¢<br>[If applicable] Average off-peak price per kilowatt-hour: [x.x]¢ |
| ***Contract*** | Minimum term:[xx] months. Penalty for early cancellation:$[xx]<br>*See Terms of Service statement for a full listing of fees, deposit policy, and other terms.* |
| ***Sources of power generation*** | *Texas*<br>***This product*** *(for comparison)*<br>Coal and lignite **[xx]%** [xx]%<br>Natural gas **[xx]%** [xx]%<br>Nuclear **[xx]%** [xx]%<br>Renewable energy **[xx]%** [xx]%<br>Other **[xx]%** [xx]%<br>**Total 100% 100%** |
| ***Emissions and waste per 1,000 kWh generated*** |  <br>(Indexed values; 100=Texas average) |

*Type used in this format*
Title: 14 point
Headings: 12 point boldface
Body: 10 point

Figure: 16 TAC §25.476(f)(7)(B)(ii)

SRR / TS,

where

SRR = the statewide REC requirement, in MWh, as calculated by the REC Trading Program Administrator for the compliance period coinciding with the Electricity Facts Label~~label~~ disclosure, and

TS = total MWh sales for all REPs~~competitive retailers~~ to Texas customers during the compliance period coinciding with the Electricity Facts Label~~label~~ disclosure.

Figure: 16 TAC §401.315(e)(3)

| Number | Relative Frequency |
|---|---|
| 2 | 2 of 21 |
| 3 | 7 of 21 |
| 4 | 12 of 21 |

Figure: 16 TAC §401.315(f)(3)(A)

| Match Field 1 | Match Field 2 | Odds | Prize Category | % of Prize Fund |
|---|---|---|---|---|
| 5 | 1 | 1:135,145,920 | Grand/Jackpot | 63.38 % |
| 5 | 0 | 1:2,649,920 | Second | 13.21% |
| 4 | 1 | 1:575,089 | Third | 1.74% |
| 4 | 0 | 1:11,276 | Fourth | 2.66% |
| 3 | 1 | 1:12,502 | Fifth | 2.40% |
| 2 | 1 | 1:833 | Sixth | 2.40% |
| 3 | 0 | 1:245 | Seventh | 5.71% |
| 1 | 1 | 1:152 | Eighth | 3.96% |
| 0 | 1 | 1:88 | Ninth | 4.54% |
| Reserve | | | | 0% |
| Totals | | 1:42.74 | | 100% |

Figure: 28 TAC §34.814(f)

Expired 1 to 90 days

| | 1 Renewal Fee | + | (Initial Fee) | = | Total Fee |
|---|---|---|---|---|---|
| Manufacturer | $1,000.00 | | $500.00 | | $1,500.00 |
| Distributor | $1,500.00 | | $750.00 | | $2,250.00 |
| Jobber | $1,000.00 | | $500.00 | | $1,500.00 |
| Pyrotechnic Operator | $25.00 | | $12.50 | | $37.50 |
| Pyrotechnic Special Effects Operator | $25.00 | | $12.50 | | $37.50 |

Expired 91 days to 2 years

| | 1 Renewal Fee | + | (Initial Fee) | = | Total Fee |
|---|---|---|---|---|---|
| Manufacturer | $1,000.00 | | $1,000.00 | | $2,000.00 |
| Distributor | $1,500.00 | | $1,500.00 | | $3,000.00 |
| Jobber | $1,000.00 | | $1,000.00 | | $2,000.00 |
| Pyrotechnic Operator | $25.00 | | $25.00 | | $50.00 |
| Pyrotechnic Special Effects Operator | $25.00 | | $25.00 | | $50.00 |

Figure: 34 TAC §41.42(d)(1)

| Central Administrators | |
|---|---|
| 004 | Ass't/Assoc. Superintendent |
| 012 | Instructional Officer (Central Office) |
| 027 | Superintendent/CAO/CEO/President |
| 028 | Teacher Supervisor (Central Office) |
| 032 | Vocational Education Coordinator (Central Office) |
| 040 | Athletic Director (Central Office) |
| 043 | Business Manager |
| 044 | Tax Assessor and/or Collector |
| 045 | Director - Personnel/Human Resources |
| 055 | Registrar (Central Office) |
| Campus Administrators | |
| 003 | Assistant Principal |
| 012 | Instructional Officer (not Central Office) |
| 020 | Principal |
| 028 | Teacher Supervisor (not central Office) |
| 032 | Vocational Education Coordinator (not Central Office) |
| 040 | Athletic Director (not Central Office) |
| 055 | Registrar (not Central Office) |

Figure: 34 TAC §41.42(d)(2)

| | |
|---|---|
| 60 | Executive Director |
| 61 | Assistant/Associate/Deputy Executive Director |
| 62 | Component/Department Director |
| 63 | Coordinator/Manager/Supervisor |

Figure: 40 TAC §44.61(a)(3)

| Co-payment Schedule for the CMPAS Program | |
|---|---|
| Net Monthly Income | Co-payment (as % of monthly cost for services) |
| $00.00 - $1,200.00 | 0% |
| $1,200.01 - $1,350.00 | 3% |
| $1,350.01 - $1,400.00 | 5% |
| $1,400.01 - $1,600.00 | 7% |
| $1,600.01 - $1,800.00 | 10% |
| $1,800.01 - $2,000.00 | 15% |
| $2,000.01 - $2,200.00 | 22% |
| $2,200.01 - $2,400.00 | 30% |
| $2,400.01 - $2,600.00 | 35% |
| $2,600.01 - $2,800.00 | 40% |
| $2,800.01 - $3,000.00 | 45% |
| $3,000.01 - $3,300.00 | 50% |
| $3,300.01 - $3,600.00 | 55% |
| $3,600.01 - $4,000.00 | 60% |
| $4,000.01 - $4,400.00 | 65% |
| $4,400.01 - $4,800.00 | 70% |
| $4,800.01 - $5,200.00 | 75% |
| $5,200.01 - $5,600.00 | 80% |
| $5,600.01 - $6,000.00 | 85% |
| $6,000.01 - $6,500.00 | 90% |
| $6,500.01 - $7,000.00 | 95% |
| $7,000.01 - and higher | 100% |

Figure: 40 TAC §97.602(d)(3)(C)

| SEVERITY LEVEL I VIOLATIONS<br>$100 - $250 per violation | |
|---|---|
| Rule Cite | Subject Matter |
| §97.13 | Relating to change of ownership. |
| §97.212 | Relating to prohibiting material alteration of a license. |
| §§97.215 - 97.219 | Relating to changes that affect the conditions of license. |
| §97.242 | Relating to having a current written document that identifies the agency's organizational structure. |
| §97.243(a) | Relating to appointing an agency administrator and an alternate or designee. |
| §97.243(a)(1) - (2) | Relating to the duties of an agency administrator. |
| §97.243(c) | Relating to adoption of a written policy for the supervision of branch offices or alternate delivery sites, if established. |
| §97.244(a)(1) - (2)(A) - (D) | Relating to the qualifications and conditions of the agency administrator and alternate or designee. |
| §97.245(1) - (9) | Relating to adoption of a written policy on an agency's staffing policies. |
| §97.246 | Relating to an agency's personnel records and content of such records. |
| §97.248 | Relating to the use of volunteers in an agency. |
| §97.249 | Relating to adoption of a written policy for the reporting of abuse, neglect, or exploitation of clients. |
| §97.250(a)(1) - (4) | Relating to adoption of a written policy for the agency's procedures for investigating complaints. |
| §97.251 | Relating to adoption of a written policy for ensuring that all professional disciplines comply with their respective professional practice acts for reporting and peer review. |
| §97.252(3) or (4) | Relating to department review of an agency's financial/business records. |
| §97.253 | If conducting drug testing, relating to adoption of a written policy on drug testing of employees. |
| §97.254 | Relating to adoption of a written policy for ensuring that the agency submits accurate billings and insurance claims. |
| §97.255 | Relating to adoption of a written policy for prohibition of illegal remuneration for securing or soliciting clients or patronage. |
| §97.256 | Relating to adoption of a written policy that describes an agency's plan for publicly known natural disaster preparedness. |
| §97.281 | Relating to adoption of a written policy that describes the agency's client care policies. |
| §97.282 | Relating to adoption of a written policy governing client conduct and responsibility and client rights. |
| §97.283(a) | Relating to adoption of a written policy for compliance with the Advance Directives Act, Health and Safety Code, Chapter 166. |
| §97.284 | Relating to adoption of a written policy for complying with the Clinical Laboratory Improvement Amendments of 1988, 42 USC, §263a, Certification of Laboratories (CLIA 1988). |
| §97.285 | Relating to adoption of a written policy that addresses infection control. |
| §97.286 | Relating to adoption of a written policy for safe handling and disposal of biohazardous waste and materials, if applicable. |

| | |
|---|---|
| §97.288 | Relating to adoption of a written policy that requires all service providers involved in the care of a client, including contracted health care professional or another agency, are engaged in an effective interchange, reporting, and coordination of care regarding the client. |
| §97.290(a) | Relating to adoption of a written policy for ensuring that back-up services are available when an employee or contractor is not available to deliver the services. |
| §97.290(b) | Relating to adoption of a written policy for ensuring that clients are educated in how to access care from the agency or another health care provider after regular business hours. |
| §97.291 | Relating to adoption of a written policy for an agency's written contingency plan. |
| §97.292 | Relating to a written agreement for services between a client and an agency and the content of the agreement. |
| §97.294 | Relating to adoption of a written policy for establishing time frame(s) for the initiation of care or services. |
| §97.296(a) | Relating to adoption of a written policy that states whether physician delegation will be honored by the agency. |
| §97.297 | Relating to adoption of a written policy for describing protocols and procedures agency staff must follow when receiving physician orders, if applicable. |
| §97.298 | Relating to adoption of a written policy for ensuring compliance with the rules adopted by the Board of Nurse Examiners for the State of Texas in 22 TAC, Chapter 224 (Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC, Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions). |
| §97.299 | Relating to adoption of a written policy for ensuring compliance with the rules of the Board of Vocational Nurse Examiners adopted at 22 TAC, Chapters 231-240 (relating to Vocational Nursing Education, Licensure and Practice in the State of Texas). |
| §97.300 | Relating to adoption of a written policy for maintaining a current medication list and medication administration record. |
| §97.301 | Relating to requirements for maintaining an agency's client records. |
| §97.301(a)(2) | Relating to adoption of a written policy that includes written procedures governing the use and removal of records, the release of information, and the incorporation of clinical, progress, or other notes into the client record. |
| §97.301(b) | Relating to adoption of a written policy for retention of records. |
| §97.302 | Relating to adoption of a written policy for pronouncement of death if that function is carried out by an agency registered nurse. |
| §97.303 | Relating to adoption of a written policy that covers the possession of sterile water or saline, certain vaccines or tuberculin, and certain drugs. |
| §97.321(b) | Relating to branch office compliance with the rules of its parent agency. |
| §97.321(e) | Relating to requirements for branch offices. |
| §97.322(b) | Relating to alternate delivery site compliance with hospice service standards. |

| | |
|---|---|
| §97.322(c) | Relating to an alternate delivery site's independent compliance with §97.403(c), (f)(1), (i), and §97.301. |
| §97.322(e)(1) - (3), and §97.246(b) | Relating to requirements for alternate delivery sites, and providing hospice services. |
| §97.401(h) | Relating to the use of home health aides. |
| §97.403(c) | Relating to adoption of a written policy for the provision of hospice services. |
| §97.403(f)(3) | Relating to professional management responsibility for arranged services. |
| §97.403(q) - (t) | Relating to services provided by a hospice. |
| §97.403(w)(5), (6), (8) or (9) | Relating to physical plant requirements in an inpatient hospice. |
| §97.403(w)(11) | Relating to meal service in an inpatient hospice. |
| §97.404(e) | Relating to ensuring that when developing the agency's operational policies, the policies are considerate of principles of individual and family choice and control, functional need, and accessible and flexible services. |
| §97.404(f)(1) - (3) | Relating to additional requirements for maintaining client records in an agency that provides personal assistance services. |
| §97.404(g) | Relating to adoption of a written policy that addresses the supervision of personnel with input from the client or family on the frequency of supervision. |
| §97.405(g) | Relating to a written transfer agreement with a local hospital for an agency that provides home dialysis services. |
| §97.405(h) | Relating to an agreement with a licensed end stage renal disease facility to provide back-up outpatient dialysis services. |
| §97.405(s) | Relating to additional requirements for maintaining client records in an agency with a home dialysis designation. |
| §97.405(v) | Relating to a written preventive maintenance program for home dialysis equipment. |
| §97.405(z) | Relating to policies and procedures for emergencies addressing fire, natural disaster, and medical emergencies required of an agency with the home dialysis designation. |
| §97.406(1) | Relating to adoption of a written policy for the provision of psychoactive treatments, if applicable. |
| §97.501(a)(5) | Relating to providing a surveyor access to records. |

Figure 40 TAC §97.602(d)(4)(B)

| SEVERITY LEVEL II VIOLATIONS<br>$500-$1,000 per violation | |
|---|---|
| Rule Cite | Subject Matter |
| §97.1(a)(2) | Relating to an agency operating without a license. |
| §97.220(b) | Relating to having adequate staff to provide services and supervise the provision of services within the agency's established service area. |
| §97.243(b) and §97.244(b) | Relating to the appointment, qualifications, and duties of a supervising nurse. |
| §97.247 | Relating to verification of employability for unlicensed persons (criminal history checks, nurse aide registry, and employee misconduct registry). |
| §97.250(a)(1) - (4) | Relating to an agency's investigation of complaints made by a client or a client's family. |
| §97.251 | Relating to compliance with the agency's written policy to ensure that all professional disciplines comply with their respective professional practice acts relating to reporting and peer review. |
| §97.252(1) or (2) | Relating to an agency's financial ability to carry out its functions. |
| §97.282 | Relating to compliance with the policies on client conduct and responsibility and client rights. |
| §97.283(a)(2) | Relating to requirement for the provision of a written statement relating to advance directives. |
| §97.284 | Relating to compliance with the Clinical Laboratory Improvement Amendments of 1988. |
| §97.286(b) | Relating to compliance with 25 TAC §§1.131-1.137 concerning the Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities. |
| §97.287 | Relating to an agency's quality assessment and performance improvement program. |
| §97.288 | Relating to compliance with an agency's policy for coordination of services. |
| §97.289(a) - (b) or §97.290(a) | Relating to an agency's use of and agreement with independent contractors, arranged services, and back-up services. |
| §97.295(a) | Relating to an agency's transfer or discharge of a client. |
| §97.296(b) | Relating to an agency's acceptance of physician delegation orders. |
| §97.300 | Relating to the administration of medication. |
| §97.303 | Relating to the possession of sterile water or saline, certain vaccines or tuberculin, and certain dangerous drugs. |
| §97.401(b) | Relating to acceptance of a client for home health services and the initiation of services. |
| §97.401(d) | Relating to having the appropriate licensed health care professional available to provide and supervise services as needed. |
| §97.401(e) | Relating to the requirement that all staff providing services, delegation, and supervision be employed by or under contract with the agency. |
| §97.402(a) | Relating to compliance with the Medicare Conditions of Participation (Social Security Act, Code of Federal Regulations, Title 42, Part 484.) |
| §97.403(w)(2) or (4) | Relating to a written plan in the event of a disaster. |
| §97.404(h) | Relating to gastrostomy tube feedings or medication administration for an agency providing personal assistance services. |

| | |
|---|---|
| §97.405(a) | Relating to agencies that provide peritoneal dialysis or hemodialysis services. |
| §97.405(e)(1) - (3) | Relating to the required services to be provided by an agency with the home dialysis designation. |
| §97.405(f)(1) or (2) | Relating to orientation and training of personnel providing direct care to clients receiving home dialysis. |
| §97.405(i) | Relating to an agency's provision of medical and other important information when a dialysis client is transferred to a health care facility for treatment. |
| §97.405(k) | Relating to routine hepatitis testing of dialysis clients and agency employees providing dialysis care. |
| §97.405(m) | Relating to the initial admission assessment of a client for home dialysis services. |
| §97.405(n) | Relating to a long-term program for clients receiving home dialysis. |
| §97.405(o) | Relating to conducting a history and physical of a home dialysis client. |
| §97.405(p)(1) or (2) | Relating to physician orders for dialysis treatment. |
| §97.405(q) | Relating to the care plan for a home dialysis client. |
| §97.405(r) | Relating to medication administration under the home dialysis designation. |
| §97.405(t) | Relating to water treatment in the home dialysis setting. |
| §97.405(w) | Relating to reuse of disposable medical devices in the home dialysis setting. |
| §97.405(x)(4) | Relating to the administration of blood and blood products for an agency with the home dialysis designation. |
| §97.405(y) | Relating to supplies for home dialysis. |
| §97.406 | Relating to the provision of psychoactive services. |
| §97.407 | Relating to the provision of intravenous therapy services. |
| §97.701 | Relating to home health aides. |
| §95.128(a) - (n) and (q) - (r) | Relating to home health medication aides. |
| §95.128(o) - (p) | Relating to a home health medication aide training program. |

# 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

Texas Health and Safety Code Settlement Notice

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to Chapter 341, Subchapter C, of the Texas Health and Safety Code. The Attorney General will consider any written comments regarding the proposed agreed judgment.

Case Title and Court: *The State of Texas v. Ricardo Espericueta and Olivia Espericueta a/k/a Olivia Espericueta;* Cause No. GV3-00327 in the 250th Judicial District, Travis County, Texas.

Nature of Suit: This suit concerns an unauthorized municipal solid waste dump site in Hidalgo County (the "Site"). The Site consists primarily of construction debris. The site is now owned by Olivia Espericueta (Ricardo Espericueta's wife).

Proposed Agreed Judgment and Permanent Injunction: The proposed Agreed Final Judgment and Permanent Injunction disposes of all parties and all claims in this cause. Defendants have agreed to pay the state, jointly and severally, $8,000 in civil penalties and $4,000 in administrative penalties. However, if Defendants remove the municipal solid waste from the Site to an authorized municipal solid waste facility within 90 days of the effective date of the order, then $4,000 of the civil penalty will be waived. Defendants have agreed to pay $2,000 in attorney's fees to the State and have agreed to pay all the court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Tracy J. Andrews, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.*

TRD-200306963
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: October 21, 2003

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## Texas Building and Procurement Commission

Invitation for Bid (IFB) Notice

The Texas Building and Procurement Commission, on behalf of the Texas Department of Health, requests bids to renovate the Texas Department of Health Building A600 for Biological Safety Lab Level III, 1100 W. 49th Street, Austin, Texas 78756.

The identification numbers for the project are **TBPC Project No. 03-017-0501** and **TBPC IFB No. 303-4-10393**.

Sealed Bids for this project will be received until **3:00 P.M., November 21, 2003, at the Bid Room, Room No. 180, 1711 San Jacinto, Austin, TX 78701**. See the IFB for other delivery choices.

Plans and specifications may be obtained from the Joshua Engineering Group, Inc., 2161 N. W. Military Highway, Suite #103, San Antonio, Texas 78213, Phone: (210) 340-2322, Fax: (210) 340-1268, for a deposit of $100.00, refundable upon return of a complete, unmarked set(s).

A mandatory Pre-Bid Conference will be held at 1100 W. 49th Street, Austin, Texas, Building L (Lab), Room L-651, at 10:00 AM, November 5, 2003. See IFB for detailed description.

Only bids submitted on the official CONTRACTOR'S BID FORM found in the Project Manual will be accepted.

The IFB may be obtained by contacting TBPC Internal Procurement, Attn: Deborah Norwood (Fax: 512-463-3360), **deborah.norwood@tbpc.state.tx.us** or through the Electronic State Business Daily at **http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=50322.**

No oral explanation in regard to the meaning of the Drawings and Specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions or doubts as to the meaning of Drawings and Specifications and all communications concerning the project shall be communicated in writing to the Deborah Norwood via fax at (512) 463-3360 or via email at **deborah.norwood@tbpc.state.tx.us** for interpretation.

Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the Specifications, which will be forwarded to all known Bidders and its receipt by the Bidder shall be acknowledged on the Contractor's Bid Form or on the face of the Addendum and returned with the bid.

TRD-200306942
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: October 20, 2003

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## Texas Cancer Council

Request for Applications

**Introduction:**

The Texas Cancer Council (the Council) announces the availability of state funds to be awarded to support the *Texas Cancer Plan*. Funds will be awarded to the selected applicant (entity or individual) that develops an effective 'Cancer Resource Enhancement Program' that enables the Council and its cancer projects to increase and enhance funds for cancer control in Texas. This will expand the Council's ability to implement all four goals of the *Texas Cancer Plan.*

Initial funding will be awarded from March 1, 2004 through August 31, 2004 and the maximum amount will be **$37,000** for that time period.

If the selected applicant is successful, the 'Cancer Resource Enhancement Program' may be a multi-year project; however, the selected applicant must reapply each year for continuation funds. Future funding beyond year one will be contingent upon selected applicant's success, and is projected to be up to $75,000 for FY 2005. Success will be measured by the overall effectiveness of the Program in securing additional funds for the Council and its cancer projects.

**Purpose:**

The purpose of this Request for Applications (RFA) is to solicit statewide applications to assist the Council in identifying, seeking, and securing public or private funds that enhance cancer control efforts and further the goals of the *Texas Cancer Plan.*

**Eligibility requirements:**

To be considered for funding, an application must be submitted by an entity or individual that will serve as the fiscal agent and legal contractor for the project. The lead entity may be a governmental agency, educational institution, a nonprofit organization, a for-profit organization or an individual applicant.

**Application requirements:**

An original application **and five copies** are due at the Council office by 5 p.m. on Monday, **December 1, 2003.** Applications must be submitted according to the Council's application instructions and forms. **Applications sent by facsimile machine will not be accepted.** Application instructions provide information about disallowable expenses, reimbursement policies, and reporting requirements. Application materials and forms can be found in the Project Guide. The Project Guide and a copy of the *Texas Cancer Plan* can be obtained by calling (512) 463-3190 or on the web at www.texascancercouncil.org.

**Applicant qualifications:**

The applicant should demonstrate:

* 5 years of successful experience in seeking and securing supplemental, enhancement or continuation funds for non-profits, governmental entities or community-based organizations;

* Knowledge and skills in strategic planning and program and budget development;

* Significant project management and organizational skills;

* The ability to work well within time constraints

* Strong computer skills;

* Excellent written, oral and interpersonal skills; and

* Evidence of the ability to work collaboratively with partners to secure funding.

* Evidence of ability to form relationships and partnerships with funding entities

* Evidence of ability to develop marketing tools

Success in securing health related grants or funds for programs that serve underserved populations is desirable, since the Council emphasizes services to underserved Texans.

**Program requirements:**

The 'Cancer Resource Enhancement Program' funded under this RFA must establish a program that successfully secures additional cancer control funds for the Texas Cancer Council and its projects. This program will create an innovative, effective process to identify and acquire potential cancer prevention and control funding sources (public and private). Other elements include the design and update of a resource list of potential funding sources; a 'how to' guide that teaches Council projects how to seek and secure additional funding; tools to assist projects with marketing themselves to potential fundors; quarterly progress reports to the Council that address efforts and successes in identifying funding opportunities and applications submitted; a system to monitor progress; and a formal annual report that describes the program's effectiveness. The report is due to the Council on June 1, 2004. Implementation phase will include informing the Council and its projects of funding opportunities, developing letters of intent and cancer grant applications on behalf of the Council and its projects, and providing ongoing development assistance to the Council and its projects. Program staff will work closely with Council staff, Council cancer project staff, and potential funders to coordinate grant and other funding activities. Coordination with the Council may include visits to Council headquarters in Austin 2-3 times per year. Applicant is expected to have at least one full time staff dedicated to the successful implementation of this program.

**Funding awards:**

TCC staff will review applications for completeness and technical merit. The Council will make final funding decisions on February 20, 2004. Written notification of approval will be sent on or about February 23, 2004. All applicants will receive written notification of the Council's decisions regarding their applications.

The Council's funding decision will be based on:

* Applicant's qualifications to successfully accomplish the project;

* Reasonableness of budgeted amounts and appropriateness of budget justifications;

* Evidence of a sound and effective program for accomplishing the project; and

* Completeness and clarity of the application.

All Council projects are funded via a cost reimbursement basis. Reimbursement may be submitted monthly or quarterly, as preferred by the project.

It is anticipated that one project will be selected under this initiative to receive Council funding. Council funding is based on the merit of the application received and the availability of funding.

All Council funded projects must submit annual continuation applications. The Council will award annual continuation contracts based upon a review of the contractor's achievement of the prior year's work plan objectives and performance measure projections, the merits of the contractor's continuation application, and the availability of Council funding.

The Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application.

**Use of funds:**

Council funds are intended for start-up expenses and operational costs, such as staff salaries and basic benefits, education materials, and other administrative expenses. Funds may not be used for indirect costs, remodeling of buildings or reduction of deficits from pre-existing operations. Further, funds may not be used to supplant existing funds or services, or to duplicate existing resources or services.

**Additional information:**

For additional information about this funding announcement, contact Mickey Jacobs, Executive Director, or Jane Osmond, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

TRD-200306985
Mickey L. Jacobs, MSHP
Executive Director
Texas Cancer Council
Filed: October 22, 2003

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## Request for Applications

**Introduction:**

The Texas Cancer Council announces the availability of state funds to be awarded to support the *Texas Cancer Plan.* Funds will be awarded to the selected applicant (entity or individual) that designs and implements a program to update and enhance the current *Texas Cancer Plan.* The *2005 Texas Cancer Plan* will consist of three parts; the Executive Summary with Goals, Objectives and Strategies; a compendium of data and resources that support the Plan; and a user friendly "Toolkit" for cancer control planning and implementation at the local level. This activity will expand the Council's ability to implement the goals of the *Texas Cancer Plan.*

Initial funding will be awarded from March 1, 2004 through August 31, 2004 (a six month period) and the maximum amount will be $50,000 for that time period. If the Council determines that the selected applicant is successful, the project will continue through June 30, 2005; however, the selected applicant must reapply for the second year of continuation funds. The initial six months will be for planning, coordinating, and managing the update process. Future funding beyond year one will be for continuation of these activities as well as writing, editing, publishing and dissemination of the updated *Texas Cancer Plan.* Year one success will be measured by evidence of effective program management skills to include:

Planning

Organization

Communication

Coordination between Council staff and cancer control partners

Conducting a thorough literature review in areas such as cancer prevention education, treatment, evidence based public health practices, research, survivorship, technology and cancer policy

Recording and reporting the update process

Integrating community and professional input into the Plan

Adhering to an established timeline in order to achieve the goal of having the *2005 Texas Cancer Plan* and *Data and Resources Compendium* written, published and disseminated throughout Texas by January 2005 and the *Cancer Control Planning and Implementation Toolkit* published and disseminated by June 2005.

**Purpose:**

The purpose of this Request for Applications (RFA) is to solicit applications for an applicant to assist the Council in planning, organizing, developing, writing, publishing, and dissemination of the *2005 Texas Cancer Plan.* The successful applicant will plan, organize, and coordinate the implementation of a process for successful completion of the *Plan* update in 2005; conduct literature reviews of state cancer control issues for all major cancer sites to identify new and expanded information needed in the updated *Plan;* integrate new and updated information into the *Plan* as directed by the Council and staff; work with Council staff and other partners to design and carry out a process for building consensus and commitment to the *Plan* from cancer control partners; provide coordination among Council, staff, and other partners who are contributing to the *Plan;* integrate input from community groups, cancer survivors, caregivers, and other stakeholders in order to stimulate interest in, better utilization of, and commitment to the *Plan;* inventory existing cancer control resources in Texas, and assist the Council and staff in identifying new services and programs that will be required to mount an effective cancer prevention and control program for all Texans.

**Eligibility requirements:**

To be considered for funding, an application must be submitted by an entity or individual that will serve as the fiscal agent and legal contractor for the project. The lead entity may be a governmental agency, educational institution, a nonprofit organization, a for-profit organization or an individual applicant. The applicant must be able to conduct regular, weekly business with Texas Cancer Council staff in Austin, Texas. It is recommended the applicant be located within driving distance of Austin.

**Application requirements:**

An original application **and five copies** are due at the Council office by 5 p.m. on Wednesday, **December 10, 2003.** Applications must be submitted according to the Council's application instructions and forms. **Applications sent by facsimile machine will not be accepted.** Application instructions provide information about disallowable expenses, reimbursement policies, and reporting requirements. Application materials and forms can be found in the Project Guide. A copy of the Project Guide and a copy of the *Texas Cancer Plan* can be obtained by calling (512) 463-3190 or on the web at www.texascancercouncil.org.

**Orientation workshop:**

An orientation workshop will be held in Austin on Wednesday, November 12, 2003, 9:00 am - 12:00 noon. The workshop will be open to all potential applicants and will be conducted to clarify RFA requirements, provide an overview of TCC responsibilities and clarify Council expectations of the successful applicant. Applicants are responsible for any travel expenses (parking, transportation, lodging, etc.) incurred to attend the workshop. To register for the workshop please contact Jane Osmond at 512-463-3190.

**Applicant qualifications:**

The applicant should demonstrate:

* Knowledge and skills in program development and implementation;

* Significant project management and organizational skills;

* The ability to work well within time constraints;

* The ability to prioritize activities, develop a time line, and stay on schedule;

* The ability to conduct a thorough, timely literature review for current information concerning cancer prevention education, treatment, evidence based public health practices, research, survivorship, technology and cancer policy;

* Strong computer skills;

* Excellent oral and interpersonal skills;

* Evidence of clear, concise, and accurate writing skills;

* Evidence of the ability to work collaboratively with partners throughout the state to develop the *Plan;*

* Proven leadership ability in coordinating work groups and advisory groups, and in facilitating the activities these groups will provide;

* Evidence of ability to elicit and incorporate ideas and input from different entities into a final product;

* Evidence of understanding of and experience with social marketing techniques;

* Evidence of experience with epidemiological data and its role in supporting evidence based health initiatives;

* Understanding of marketing communications techniques that may be used to distribute and raise visibility for the *Plan;*

* Document an in-kind contribution of at least ten percent. In-kind contributions may include applicant funds committed to the project, donated services, or other in-kind contributions. The Council reserves the right to waive this requirement, on a case-by-case basis.

**Funding awards:**

TCC staff will review applications for completeness and technical merit. The Council will make final funding decisions on February 20, 2004. Written notification of approval will be sent on or about February 23, 2004. All applicants will receive written notification of the Council's decisions regarding their applications.

The Council's funding decision will be based on:

* Applicant's qualifications to successfully accomplish the project;

* Reasonableness of budgeted amounts and appropriateness of budget justifications;

* Evidence of a sound and effective program for accomplishing the project; and

* Completeness and clarity of the application.

All Council projects are funded via a cost reimbursement basis. Reimbursement may be submitted monthly or quarterly, as preferred by the project.

It is anticipated that one project will be selected under this initiative to receive Council funding. Council funding is based on the merit of the application received and the availability of funding.

All Council funded projects must submit annual continuation applications. The Council will award annual continuation contracts based upon a review of the contractor's achievement of the prior year's work plan objectives and performance measure projections, the merits of the contractor's continuation application, and the availability of Council funding. Future year funding for this project is projected to be up to $83,000 for the remaining ten months.

The Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application.

**Use of funds:**

Council funds are intended for start-up expenses and operational costs, such as staff salaries and basic benefits, travel, communications, office supplies, and other administrative expenses. Funds may not be used for indirect costs, remodeling of buildings or reduction of deficits from pre-existing operations. Further, funds may not be used to supplant existing funds or services, or to duplicate existing resources or services.

**Additional information:**

For additional information about this funding announcement, contact Mickey Jacobs, Executive Director, or Jane Osmond, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

TRD-200306987
Mickey L. Jacobs, MSHP
Executive Director
Texas Cancer Council
Filed: October 22, 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, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of October 27, 2003 - November 2, 2003 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of October 27, 2003 - November 2, 2003 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of November 1, 2003 - November 30, 2003 is 5% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of November 1, 2003 - November 30, 2003 is 5% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200306957
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 21, 2003

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## Credit Union Department

### 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 from Dallas County Employees Credit Union, Dallas, Texas. The credit union is proposing to change its name to Dallas County 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-200306970

Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 22, 2003

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## Applications for a Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Catholic Credit Union (Del Rio) seeking approval to merge with St. Joseph's Credit Union (San Antonio) with the latter being the surviving credit union.

An application was received from Dallas Treasury Credit Union (Dallas) seeking approval to merge with Trabusa Federal Credit Union (Mesquite). Dallas Treasury Credit Union will be the surviving credit union.

An application was received from GTX Credit Union (Houston) seeking approval to merge with JSC Federal Credit Union (Houston) 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-200306974
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 22, 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 EDS Credit Union, Plano, Texas to expand its field of membership. The proposal would permit persons who live, work or are located in Collin, Denton, and Dallas County, Texas, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of A2D Technologies who work in or are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

An application was received from Dallas County Employees Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who live and/or work in and business entities in Dallas County, Texas, to be eligible for membership in the credit union.

An application was received from Galleria Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who live, work, or attend school within a 10-mile radius of the Galleria Credit Union's office located at 13155 Noel Road, Dallas, Texas 75240, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas (#1) to expand its field of membership. The proposal would permit individuals who live, work or attend school within a 10-mile radius of the Texans Credit Union branch located at 12201 Southwest Freeway, Stafford, Texas, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas (#2) to expand its field of membership. The proposal would permit persons who reside, work or attend school in the following Texas Counties: Dallas, Ellis, Johnson, Parker, Tarrant, Denton and Grayson, to be eligible for membership in the credit union.

An application was received from Neighborhood Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who work, reside or attend school in Rockwall County, 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-200306973
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 22, 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) to Expand Field of Membership - Approved

Houston Energy Credit Union, Houston, Texas - See *Texas Register* issue dated July 25, 2003.

Energy Capital Credit Union, Houston, Texas (Amended) - Persons who live or work within a ten mile radius of the following Energy Capital Credit Union office locations: 800 Bell Street, Houston, TX; 3120 Buffalo Speedway, Houston, TX; 4500 Dacoma, Houston, TX; 233 Benmar, Houston, TX; 13501 Katy Freeway, Houston, TX; and 396 W. Greens Road, Houston, TX.

BP Employees Credit Union, Alvin, Texas (#1) - See *Texas Register* issue dated August 29, 2003.

BP Employees Credit Union, Alvin, Texas (#2) - See *Texas Register* issue dated August 29, 2003.

EECU, Fort Worth, Texas (#1) - See *Texas Register* issue dated August 29, 2003.

EECU, Fort Worth, Texas (#2) - See *Texas Register*issue dated August 29, 2003.

EECU, Fort Worth, Texas (#3) - See *Texas Register* issue dated August 29, 2003.

EECU, Fort Worth, Texas (#4) - See *Texas Register* issue dated August 29, 2003.

EECU, Fort Worth, Texas (#5) - See *Texas Register* issue dated August 29, 2003.

MemberSource Credit Union, Houston, Texas - See *Texas Register* issue dated August 29, 2003.

OmniAmerican Credit Union, Fort Worth, Texas (#1) - See *Texas Register* issue dated August 29, 2003.

OmniAmerican Credit Union, Fort Worth, Texas (#2) - See *Texas Register* issue dated August 29, 2003.

South Texas Area Resources Credit Union, Corpus Christi, Texas - See *Texas Register* issue dated August 29, 2003.

The Education Credit Union, Amarillo, Texas - See *Texas Register* issue dated August 29, 2003.

TRD-200306975
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 22, 2003

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## Texas Education Agency

### Request for Applications Concerning Project GREAT: Adult Education and Family Literacy Regional Centers of Excellence, 2003-2004

Filing Date. October 22, 2003

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-03-031 is authorized by Title II, Workforce Investment Act, P.L. 105-220, §223, State Leadership Activities.

Eligible Applicants. The Texas Education Agency (TEA) has authorized Texas LEARNS, a division of the Harris County Department of Education, to request applications under Request for Applications (RFA) #701-03-031 from: (1) local educational agencies; (2) regional education service centers; (3) nonprofit community-based or faith-based organizations of demonstrated effectiveness; (4) nonprofit volunteer literacy organizations of demonstrated effectiveness; (5) institutions of higher education; (6) public or private nonprofit educational agencies; (7) libraries; (8) public housing authorities; (9) nonprofit institutions that are not described above and have the ability to provide adult basic skills and family literacy education programs to adults and families; (10) or consortiums of agencies, organizations, institutions, libraries, or authorities described above.

Description. The purpose of this program is to provide the operation of professional development programs to improve the quality of instruction provided pursuant to local activities required under Title II, Workforce Investment Act, §231(b), including instruction incorporating the essential components of reading instruction and instruction provided by volunteers or by personnel of a State or outlying area; the provision of technical assistance to eligible providers of adult basic skills and family literacy education programs for development and dissemination of scientific research-based instructional practices in reading, writing, speaking, mathematics, and English language acquisition programs; the provision of technology assistance, including staff training to eligible providers of adult basic skills and family literacy education programs, including distance learning activities, to enable the eligible providers to improve the quality of such activities; and the development and implementation of technology applications or distance learning, including professional development to support the use of instructional technology.

Dates of Project. Applicants should plan for a starting date of no earlier than February 2, 2004, and an ending date of no later than September 30, 2005 for the initial planning period.

Project Amount. Funding will be provided for up to eight regional centers of excellence for two years based upon availability of funds. Each center will receive a maximum of $256,000 for the initial eight-month project period and $384,000 for the second project period beginning October 1, 2005. Project funding in the second year will be based on satisfactory progress of the initial eight month's objectives and activities and on general budget approval by the commissioner of education and appropriations by the U. S. Congress.

Selection Criteria. Applications will be selected based on the independent reviewer's assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. Texas LEARNS and the TEA reserve the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

Texas LEARNS and TEA are not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit Texas LEARNS/TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate Texas LEARNS/TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-03-031 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, contact Federico Salas, Texas LEARNS, Harris County Department of Education, at (713) 696-0700.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, December 11, 2003, to be considered for funding.

TRD-200306969
Cristina De La Fuente-Valadez
Manager, Rules Coordination
Texas Education Agency
Filed: October 22, 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: Semiannual GPAC Report due July 15, 2003**

Ronnie Sowell, Lubbock Professional Police PAC, Security Park, 3602 Slide Rd. Ste. B-34, Lubbock, Texas 79414-2548

Darwin McKee, Central Texas PAC Centre Development, P.O. Box 2513, Austin, Texas 78768

Wm. M. Eastland, Citizens For Honesty In Taxation, 318 W. Main St. Ste. 101, Arlington, Texas 76010

G. Daniel Mena, Unity 94 El Paso County, 3233 N. Piedras, El Paso, Texas 79930-3703

Charles M. Miles, Black Voter Action Project, 7204 Marywood Circle, Austin, Texas 78723

David R. Garcia, Brownsville Police Officers Assn. PAC, 600 E. Jackson St., Brownsville, Texas 78520

Vicki L. Hoover, Rockwall County Democratic Party PAC, 6209 Scenic Dr., Rowlett, Texas 75088

Lillie Cochran, Caldwell County Democrats, P.O. Box 141, Lockhart, Texas 78644

Eartha Dotson, Galveston County Democrats Club, 1405 Appomattox Dr., Texas City, Texas 77591

Vidal G. De Leon, McLennan County Mexican Americans For Better Government PAC, 1619 Baylor Ave., Waco, Texas 76706

Pat Stevens, South Denton County PAC, 2025 Aspen Dr., Highland Village, Texas 75067

J.R. Tyson, DOG PAC, P.O. Box 1326, Alvin, Texas 77512

H.J. Johnson, Pleasant Wood Pleasant Grove PAC, P.O. Box 150408, Dallas, Texas 75305-0408

Janice L. Burkholder, Pathfinders Republican Women's Club, 21 Towering Pines Dr., The Woodlands, Texas 77381

Terry Zettle, Irving Police Assn. PAC, 845 Falcon Lane, Coppell, Texas 75019-5923

David G. Ford, Assn. Of Automotive Service Providers Of Texas PAC, P.O. Box 50110, Austin, Texas 78763-0110

Rick Neudorff, Collin County Republican Party (PTYCORP), 2307 Bengal, Plano, Texas 75023

Kenneth Stinson, Glass, Molders, Pottery, Plastics & Allied Workers International Union Local Union #284, 208 Eckman, Longview, Texas 75602

Roberto A. Calderon, El Paso County Sheriff's Officers Assn., Inc., 11536 Spencer, El Paso, Texas 79936-3393

William E. Muirhead, Muirhead Election Committee, 158 Countrywood Est., Cleveland, Texas 77327

Richard H. Callison, Greater Texas Sportsmen's Coalition, Texas Comerce Tower, 4212 San Felipe #510, Houston, Texas 77027-2902

Daniel L. Easterly, Fund To Take Back Texas Prisons, 1500 S. Dairy Ashford #115, Houston, Texas 77077

Michael H. Jones, Voice Of The Elephant, 5744 Danciger Dr., Fort Worth, Texas 76112-3951

Jacqueline L. Hasan, Muslim American PAC, 5522 Ave. K, Galveston, Texas 77551

Dina Gonzales, Concerned Citizens For Better Government, 1510 7th Street, Floresville, Texas 78114

Arnold Pedraza, American Hispanics On Reform & Accountability, P.O. Box 3916, McAllen, Texas 78502

Clarence B. Bagby, Houston Historic Preservation PAC, 2003 Kane St., Houston, Texas 77007-7612

Bart C. Standley, Campaign For Houston, 3323 Richmond Ave. #C, Houston, Texas 77098-3007

Fernando Contreras Jr., Southside Democrats, P.O. Box 37278, San Antonio, Texas 78237-0278

Nancy Hrobar, Van Zandt County Assn. Of Taxpayers, 14232 FM 773, Ben Wheeler, Texas 75754

Louis T. Getterman III, Williamson County Republican Party General Election Campaign Fund, P.O. Box 1653, Georgetown, Texas 78627

Lydia P. Meuret, American Dream PAC, P.O. Box 681937, San Antonio, Texas 78250

Peter L. Bargmann, Judicial Elections For Texas PAC, 660 Preston Forest Center #LB 362, Dallas, Texas 75230-2718

Karen K. Tarry, Doctors For Better Government, 5615 Morningside Dr. #402, Houston, Texas 77005

James R. Reynolds, Texans For Quality Health PAC, 4600 Tamarisk Cove, Austin, Texas 78747

Hector C. Carreno, Latina PAC, 3730 Kirby Dr. Suite 418, Houston, Texas 77098

Anthony R. Godinez, Judge Murray Moore Campaign Committee, 815 Produce Rd., Hidalgo, Texas 78557

Leslie J. Baldwin, El Paso Pachyderms Pack Fund, 9455 Viscount Blvd. #116, El Paso, Texas 79925-7008

Michael J. Warner, Texas Amusement Association PAC, P.O. Box 92167, Austin, Texas 78709

Curtis B. Carden, Texas Tax Relief, 21226 Park Bend Dr., Katy, Texas 77450-4143

John Carpenter, Pecos County Greens, P.O. Box 501, Fort Stockton, Texas 79735-0501

John R. King, Committee for Private Property Rights, 5203 CR 1470, Lubbock, Texas 79407

Jenny L. Arceo, Filipino American Caucus for Empowerment, 8901 Jones Rd. #116, Houston, Texas 77065

Kathie N. Ware, Concerned Citizens for Regional Water Political Action Committee, 12210 De Forrest, Houston, Texas 77066

John W. Lowe, Citizens for Joe Roberts, 1518 Raleigh, Carrollton, Texas 75007

Eric A. Brandler, University Republicans Alumni, 7701 Estates Way, Rowlett, Texas 75089

Glenn F. Fuller, Plumbers PAC, 11501 W. Hardy, Houston, Texas 77076

Hugh L. Brady, Project for a Democratic Texas, #433 603 W. 13th St., Suite 1A, Austin, Texas 78701

August R. Smalley, Texans for a Greener Tomorrow, 2408 Enfield Rd. Apt. 209, Austin, Texas 78703-3266

**Deadline: July Semiannual Report due July 15, 2003**

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Bernard C. Amadi, 3030 Shadowbriar Dr., Apt. 635, Houston, Texas 77082-8336

David Arevalo, 627 Delaware, San Antonio, Texas 78210

Kathleen Ballanfant, 5160 Spruce, Bellaire, Texas 77401

Donna Ballard, 4009 Ridgecrest Trail, Carrollton, Texas 75007-1625

Martin Basaldua, 1719 Brookside Pine Lane, Kingwood, Texas 77345

Boyd W. Bauer, P.O. Box 1436, Beeville, Texas 78104

Burgess Beall, 2428 Central Ave. #201, Alameda, California 94501-4536

Stephen P. Birch, 4912 Haverwood Lane, Apt. 818, Dallas, Texas 75287-4422

Michael J. Bolzenius, 12015 Newport Shore Dr., Houston, Texas 77065-3920

James R. Bridges, 5447 Willis, Dallas, Texas 75206

Richard H. Chenevert, 1300 Crossing Pl.#2511, Austin, Texas 78741

Gerry N. Crawford, Rt.16 Box 2161, Lufkin, Texas 75901

Chloe N. Daniel, P.O. Box 810570, Dallas, Texas 75381-0570

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Ernesto L. DeLeon, 224 Jade St., Brownsville, Texas 78520

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Richard N. Draheim Jr., 339 Henry M. Chandler's Dr., Rockwall, Texas 75032-2439

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Philip L. Durgin, 31 Laurel Hill, Austin, Texas 78737-9309

Al Edwards, 4913 Griggs Road, Houston, Texas 77021

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Jack D. Ewing, 2938 Meadowbrook Dr., League City, Texas 77573

Baltazar Garcia, 712 McDaniel, Houston, Texas 77022

Juan A. Garcia, 1101 S. Cameron, Alice, Texas 78332

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Samuel Gonzalez, 600 E. Anderson Rd., Trlr 601, Houston, Texas 77047-5135

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Bobby E. Hearn, Jr., 5909 Springtide Dr., Fort Worth, Texas 76135

A. Robert Hinojosa, 7211 Regency Sq. Blvd. Ste. 111, Houston, Texas 77036

Martha Huerta, 309 Peerman Pl., Corpus Christi, Texas 78411

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Stephen Kyle Johnston, 678 Fawn Dr., Houston, Texas 77015

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S. Christopher LaRue, 10878 Westheimer Rd. #373, Houston, Texas 77042-3202

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David C. Scott, 2413 27th St., Lubbock, Texas 79411-1301

Victor Smith, 1423 W. Red Bird Lane, Dallas, Texas 75232

Juan F. Solis III, 907 W. Kirk, San Antonio, Texas 78226

Ivan E. Stober, 2801 Meadowbrook Dr., Fort Worth, Texas 76103-2814

Frank W. Sullivan III, 322nd District Court, Civil Courts Bldg., Fort Worth, Texas 76196

Joe W. Swirczynski, P.O. Box 733, Mineral Wells, Texas 76068

Gregory R. Travis, Box 337, Fulshear, Texas 77441

Rudy G. Vasquez, P.O. Box 3664, Houston, Texas 77253-3664

Melva Washington-Becnel, 2403 Arbor, Houston, Texas 77004

Thomas J. Wattley Jr., 1620 Kent St., Dallas, Texas 75203

Larry M. Wessels, P.O. Box 340, LaGrange, Texas 78945

Robert Lee West, 1525 Lakeshore Dr., Little Elm, Texas 75068

Clifford F. William J.D., 8915 Sangamon, Houston, Texas 77074

John Worldpeace, 2620 Fountain View #106, Houston, Texas 77057

Virgil W. Yanta, 140 Hwy. 46 W., Boerne, Texas 78006-8114

Alma Zepeda, 121 E. 12th #9, Houston, Texas 77008

**Deadline: Monthly MPAC Report Due August 5, 2003**

Carvel McNeil Jr., Houston Police Patrolmen's Union PAC, 1900 N. Loop West #540, Houston, Texas 77018

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. Stevesn, Texas Assn. Of Preferred Provider Organizations PAC, 816 Congress Ave. Suite 1100, Austin, Texas 78701-2471

TRD-200306780
Karen Lundquist
Executive Director
Texas Ethics Commission
Filed: October 15, 2003

♦ ♦ ♦

## Office of the Governor

### Request for Grant Applications (RFA) for Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for prevention, diversion, intervention and training projects focusing on juvenile delinquency under the state fiscal year 2005 grant cycle.

Purpose: The purpose of the JJDP Act Fund Program is to prevent juvenile delinquency and teach young offenders how to change their lives through accountability and responsibility for their actions.

Available Funding: Federal funding is authorized under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, Public Law 93-415, codified as amended at 42 U.S.C 5601 et seq.

Standards: Grantees must comply with the standards applicable to this funding source contained in the Texas Administrative Code, Title 1, Part 1, Chapter 3 and the requirements of the federal statutes that authorize this funding.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Nonprofit corporations;

(4) Indian tribes performing law enforcement functions;

(5) Crime control and prevention districts; and

(6) Universities;

(7) Colleges;

(8) Independent school districts;

(9) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Requirements: Projects must address at least one of the following needs as described in the Texas Administrative Code, Title 1, Part 1, Chapter 3, §3.53:

(1) Family;

(2) Early Intervention and Prevention;

(3) Schools/Education;

(4) Reduce Disproportionate Minority Representation in the Juvenile Justice System;

(5) Safe Environment; and

(6) Juvenile Justice Policies, Procedures and Facilities

Project Period: Grant-funded projects must begin on or after September 1, 2004, and will expire on or before August 31, 2005.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site address located at http://www.governor.state.tx.us.

Preferences: Preference will be given to applicants who:

(1) demonstrate cost effective programs focused on a comprehensive and effective approach to services; and

(2) focus on juvenile delinquency prevention and intervention.

Closing Date for Receipt of Applications: All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division via e-mail at cjdapps@governor.state.tx.us on or before January 5, 2004. Applicants must also submit the "Grant Application Certification Form" signed by the Authorized Official directly via facsimile at (512) 475-2440 or mail to the Office of the Governor, Criminal Justice Division on or before January 5, 2004. The mailing address is: P.O. Box 12428, Austin, Texas 78711; and the physical address is: 1100 San Jacinto Blvd., 2nd Floor, Austin, Texas 78701.

Selection Process:

(1) Upon submission to CJD, all applications are reviewed for eligibility. A "Determine Eligibility Form" is included with the application kit and must be completed in its entirety for the application to be considered for funding.

(2) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) The executive committee of the COG will approve the "Priority Listing" of recommended grant applications for funding and will forward this list to CJD.

(d) CJD will make all final funding decisions based upon COG priorities, reasonableness, availability of funding, and cost-effectiveness.

(3) For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Jim Kester at jkester@governor.state.tx.us or (512) 463-1919.

TRD-200307022
David Zimmerman
General Counsel
Office of the Governor
Filed: October 22, 2003

♦ ♦ ♦

Request for Grant Applications (RFA) for the Safe and Drug-Free Schools and Communities (SDFSC) Act Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that provide services to children, youth, and families that help prevent drug use and promote safety in schools and communities under the state fiscal year 2005 grant cycle.

Purpose: The purpose of the SDFSC Act Fund Program is to support projects that prevent violence in and around schools; prevent the illegal use of alcohol, tobacco, and drugs; involve parents and communities; and coordinate related Federal, State, school, and community efforts and resources to foster a safe and drug-free learning environment that supports student academic achievement.

Available Funding: Federal funding is authorized under the Elementary and Secondary Education Act, Title IV, Part A, Subpart 1, §4011-4117, as amended, Public Law 107-110.

Standards: Grantees must comply with the standards applicable to this funding source contained in the Texas Administrative Code, Title 1, Part 1, Chapter 3 and the requirements of the federal statutes that authorize this funding.

Prohibitions:

(1) Grantees may not use grant funds to provide medical services or drug treatments services; and

(2) Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible Applicants:

(1) Councils of governments;

(2) Cities;

(3) Counties;

(4) Universities;

(5) Colleges;

(6) Independent school districts;

(7) Nonprofit corporations;

(8) Crime control and prevention districts;

(9) State agencies;

(10) Native American tribes;

(11) Regional education service centers;

(12) Community supervision and corrections departments;

(13) Juvenile boards; and

(14) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Requirements: Grant funds will be awarded based on:

(1) the quality of the project proposed; and

(2) how the project meets the principles of effectiveness described in the Texas Administrative Code, Title 1, Part 1, Chapter 3, Subchapter C, §3.403(e).

Project Period: Grant-funded projects must begin on or after September 1, 2004, and will expire on or before August 31, 2005.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site address located at http://www.governor.state.tx.us.

Preferences: Preference will be given to applicants who:

(1) demonstrate cost effective programs focused on a comprehensive and effective approach to services;

(2) prevent illegal drug use and violence for:

(a) children and youth who are not normally served by state educational agencies or local educational agencies; or

(b) populations that need special services or additional resources; and

(3) Pursue a comprehensive approach to drug and violence prevention that includes providing and incorporate mental health services related to drug and violence prevention in their project.

Closing Date for Receipt of Applications: All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division via e-mail at cjdapps@governor.state.tx.us on or before January 5, 2004. Applicants must also submit the "Grant Application Certification Form" signed by the Authorized Official directly via facsimile at (512) 475-2440 or mail to the Office of the Governor, Criminal Justice Division on or before January 5, 2004. The mailing address is: P.O. Box 12428, Austin, Texas 78711; and the physical address is: 1100 San Jacinto Boulevard, 2nd Floor, Austin, Texas 78701.

Selection Process:

(1) Upon submission to CJD, all applications are reviewed for eligibility. A "Determine Eligibility Form" is included with the application kit and must be completed in its entirety for the application to be considered for funding.

(2) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) The executive committee of the COG will approve the "Priority Listing" of recommended grant applications for funding and will forward this list to CJD.

(d) CJD will make all final funding decisions based upon COG priorities, reasonableness, availability of funding, and cost-effectiveness.

(3) For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Sanzanna Lolis at slolis@governor.state.tx.us or (512) 463-1919.

TRD-200307023
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: October 22, 2003

♦ ♦ ♦

Request for Grant Applications (RFA) for the State Criminal Justice Planning (421) Fund

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that reduce crime and make improvements to the criminal and juvenile justice system under the state fiscal year 2005 grant cycle.

Purpose: The purpose of the Fund 421 Program is to provide an array of services and projects that reduce crime and improve the criminal and juvenile justice systems.

Available Funding: State funding is authorized for these projects under §772.006 of the Texas Government Code designating CJD as the fund's administering agency. The Criminal Justice Planning Fund is established by §102.056 and §102.075, Texas Code of Criminal Procedure. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

Standards: Grantees must comply with the standards applicable to this funding source contained in the Texas Administrative Code, Title 1, Part 1, Chapter 3.

Prohibitions:

(1) Projects may not use grant funds to serve adult offenders charged with, given deferred adjudication for, or convicted of violent or other serious crimes. Exceptions may be granted in the following instances:

(a) projects that support drug treatment and prevention programs;

(b) innovative projects in prisons, jails, and community supervision and corrections departments.

(2) Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Independent school districts;

(4) Nonprofit corporations;

(5) Native American tribes;

(6) Councils of governments;

(7) Universities;

(8) Colleges;

(9) Hospital districts;

(10) Juvenile boards;

(11) Regional education service centers;

(12) Community supervision and corrections departments;

(13) Crime control and prevention districts; and

(14) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities certified by the Internal Revenue Service.

Requirements:

(1) CJD will award grants designed to reduce crime and improve the criminal and juvenile justice systems.

(2) For projects exclusively serving juveniles or youth, grantees must address at least one of the following needs to be eligible for funding:

(a) Family;

(b) Early intervention and prevention;

(c) Schools and education;

(d) Reduce Disproportionate Minority Representation in the juvenile justice system;

(e) Safe environment;

(f) Juvenile justice policies, procedures and facilities;

Project Period: Grant-funded projects must begin on or after September 1, 2004 and will expire on or before August 31, 2005.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site address located at http://www.governor.state.tx.us.

Preferences: Preference will be given to applicants who demonstrate cost effective programs focused on a comprehensive and effective approach to services.

Closing Date for Receipt of Applications: All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division via e-mail at cjdapps@governor.state.tx.us on or before January 19, 2004. Applicants must also submit the "Grant Application Certification Form" signed by the Authorized Official directly via facsimile at (512) 475-2440 or mail to the Office of the Governor, Criminal Justice Division on or before January 19, 2004. The mailing address is: P.O. Box 12428, Austin, Texas 78711; and the physical address is: 1100 San Jacinto Blvd., 2nd Floor, Austin, Texas 78701.

Selection Process:

(1) Upon submission to CJD, all applications are reviewed for eligibility. A "Determine Eligibility Form" is included with the application kit and must be completed in its entirety for the application to be considered for funding.

(2) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) The executive committee of the COG will approve the "Priority Listing" of recommended grant applications for funding and will forward this list to CJD.

(d) CJD will make all final funding decisions based upon COG priorities, reasonableness, availability of funding, and cost-effectiveness.

(3) For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact person: If additional information is needed, contact Judy Switzer at jswitzer@governor.state.tx.us or (512) 463-1919.

TRD-200307021
David Zimmerman
General Counsel
Office of the Governor
Filed: October 22, 2003

♦ ♦ ♦

## Request for Grant Applications (RFA) for the STOP Violence Against Women Act (VAWA) Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that reduce and prevent violence against women under the state fiscal year 2005 grant cycle.

Purpose: The purpose of the VAWA Fund Program is to assist in developing and implementing effective victim-centered law enforcement, prosecution, and court strategies to address violent crimes against women and the development and enhancement of victim services in cases involving crimes against women.

Available Funding: Federal funding is authorized under the Violent Crime Control and Law Enforcement Act of 1994; Omnibus Crime Control and Safe Streets Act of 1968, as amended, §2001-6 U.S.C. 3796gg to 3796gg5, and reauthorized under Division B of the Victims of Trafficking and Violence Protection Act of 2000, §1103.

Funding Levels:

(1) Minimum grant award --$5,000.

(2) Maximum grant award--$80,000 (unless an exception is granted by CJD in extraordinary circumstances).

(3) Maximum grant award for Violence Against Women Courts--$250,000.

Required Match: Grantees must provide matching funds of at least twenty-five percent (25%) of total project expenditures. This requirement may be met through cash and/or in-kind contributions.

Standards: Grantees must comply with the standards applicable to this funding source contained in the Texas Administrative Code, Title 1, Part 1, Chapter 3 and the requirements of the federal statutes that authorize this funding.

Prohibitions: Grantees may not use grant funds or program income to support the following services, activities, and costs:

(1) programs that focus on children and/or men;

(2) legal assistance and representation in civil matters other than protective orders;

(3) cash payments to victims;

(4) employment agency fees;

(5) fundraising activities;

(6) liability insurance on buildings;

(7) major maintenance on buildings;

(8) newsletters, including supplies, printing, postage and time;

(9) legal defense services for perpetrators of violence against women;

(10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds, including the Texas Crime Victims Compensation Fund; and

(11) proselytizing or sectarian worship.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Nonprofit corporations;

(4) Indian tribal governments;

(5) Councils of governments;

(6) Universities;

(7) Colleges;

(8) Community supervision and corrections departments;

(9) Crime control and prevention districts; and

(10) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Requirements:

(1) All applicants must meet at least one of the following eligible purpose areas established by the federal Office on Violence Against Women and codified at 28 C.F.R. §90:

(a) training law enforcement officers, judges, other court personnel, and prosecutors to more effectively identify and respond to violent crimes against women;

(b) developing, training or expanding units of law enforcement officers, judges, other court personnel, and prosecutors specifically targeting violent crimes against women;

(c) developing more effective police, court, and prosecution policies, protocols, orders, and services devoted to preventing, identifying, and responding to violent crimes against women;

(d) developing, installing, or expanding data collection and communication systems, including computerized systems linking police, prosecutors, and the courts or to identify and track arrests, protection orders, prosecutions, and convictions;

(e) developing, enlarging, or strengthening victim services programs including improving delivery of services to underserved populations and providing specialized domestic violence court advocates;

(f) developing, expanding or strengthening programs addressing stalking;

(g) developing, enlarging, or strengthening programs addressing the needs and circumstances of Indian tribes in dealing with violent crimes against women;

(h) supporting formal and informal statewide, multidisciplinary efforts, to the extent not supported by state funds, to coordinate the response of state law enforcement agencies, prosecutors, courts, victim services agencies, and other state agencies and departments, to violent crimes against women, including the crimes of sexual assault, domestic violence, and dating violence;

(i) training of sexual assault forensic medical personnel examiners in the collection and preservation of evidence, analysis, prevention, and providing expert testimony and treatment of trauma related to sexual assault;

(j) developing, enlarging, or strengthening programs to assist law enforcement, prosecutors, courts, and others to address the needs and circumstances of older and disabled women who are victims of domestic violence or sexual assault, including recognizing, investigating, and prosecuting instances of such violence or assault and targeting outreach and support, counseling, and other victim services to such older and disabled individuals; and

(k) providing assistance to victims of domestic violence and sexual assault in immigration matters.

(2) In addition, projects must address at least one of the following state priorities developed in coordination with the STOP Violence Against Women Planning Council:

(a) Priorities for Victim Services Projects:

(i) provide essential services related to family violence, sexual assault, stalking and dating violence;

(ii) promote outreach and services into under-served communities for family violence, sexual assault, stalking and dating violence;

(iii) provide or improve training for victim advocates;

(iv) establish or maintain a family violence, sexual assault, stalking, and/or dating violence taskforce that promotes a coordinated community response, including multi-jurisdictional efforts.

(b) Priorities for Law Enforcement Projects:

(i) promote or improve training for law enforcement agencies related to family violence, sexual assault, stalking and dating violence;

(ii) develop specialized family violence, sexual assault, stalking, dating violence and/or victim service divisions within law enforcement agencies;

(iii) collaborate, plan and initiate unified policies among the different law enforcement and social services agencies for family violence, sexual assault, stalking and dating violence;

(iv) establish or maintain a family violence, sexual assault, stalking and/or dating violence taskforce which promotes a coordinated community response, including multi-jurisdictional efforts.

(c) Priorities for Prosecution Projects:

(i) develop specialized family violence, sexual assault, stalking, dating violence and/or victim service divisions within prosecutors' offices;

(ii) provide or improve training for prosecution agencies related to family violence, sexual assault, stalking and dating violence;

(iii) promote outreach and services into under-served communities for family violence, sexual assault, stalking and dating violence;

(iv) establish or maintain a family violence, sexual assault, stalking and/or dating violence taskforce that promotes a coordinated community response, including multi-jurisdictional efforts.

(d) Priorities for Court Projects:

(i) promote or improve training for judges and court personnel related to family violence, sexual assault, stalking and dating violence;

(ii) provide specialized courts and/or court services aimed at family violence, sexual assault, stalking and/or dating violence;

(iii) provide in-court victims assistance for family violence, sexual assault, stalking and dating violence victims;

(iv) promote outreach and services into under-served communities related to family violence, sexual assault, stalking and dating violence.

Project Period: Grant-funded projects must begin on or after September 1, 2004, and will expire on or before August 31, 2005.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site address located at http://www.governor.state.tx.us.

Preferences: Preference will be given to applicants who:

(1) demonstrate cost effective programs focused on a comprehensive and effective approach to services; and

(2) applicants who focus on assisting in developing and strengthening effective law enforcement, prosecution, and court strategies to combat violent crimes against women and to applicants who focus on developing and strengthening victim services in such cases.

Closing Date for Receipt of Applications: All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division via e-mail at cjdapps@governor.state.tx.us on or before January 19, 2004. Applicants must also submit the "Grant Application Certification Form" signed by the Authorized Official directly via facsimile at (512) 475-2440 or mail to the Office of the Governor, Criminal Justice Division on or before January 19, 2004. The mailing address is: P.O. Box 12428, Austin, Texas 78711; and the physical address is: 1100 San Jacinto Boulevard, 2nd Floor, Austin, Texas 78701.

Selection Process:

(1) Upon submission to CJD, all applications are reviewed for eligibility. A "Determine Eligibility Form" is included with the application kit and must be completed in its entirety for the application to be considered for funding.

(2) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) The executive committee of the COG will approve the "Priority Listing" of recommended grant applications for funding and will forward this list to CJD.

(d) CJD will make all final funding decisions based upon COG priorities, reasonableness, availability of funding, and cost-effectiveness.

(3) For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact person: If additional information is needed, contact Angie Martin at amartin@governor.state.tx.us or (512) 463-1919.

TRD-200307025
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: October 22, 2003



## Request for Grant Applications (RFA) for the Victims of Crime Act (VOCA) Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that provide services to victims of crime under the state fiscal year 2005 grant cycle.

Purpose: The purpose of the VOCA Fund Program is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following:

(1) responding to the emotional and physical needs of crime victims;

(2) assisting victims in stabilizing their lives after a victimization;

(3) assisting victims to understand and participate in the criminal justice system; and

(4) providing victims with safety and security.

Available Funding: Federal funding is authorized for these projects under the Victims of Crime Act of 1984 (VOCA) as amended, U.S.C. 10601 et seq.

Funding Levels: Minimum grant award--$5,000.

Required Match: Grantees, other than Native American Tribes, must provide matching funds of at least twenty percent (20%) of total project expenditures. Native American Tribes must provide a five percent (5%) match. This requirement may be met through cash and/or in-kind contributions.

Standards: Grantees must comply with the standards applicable to their funding source contained in the Texas Administrative Code, Title 1, Part 1, Chapter 3 and the requirements of the federal statutes that authorize this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) indirect costs;

(3) lobbying and administrative advocacy;

(4) perpetrator rehabilitation and counseling or services to incarcerated individuals;

(5) needs assessments, surveys, evaluations, and studies;

(6) prosecution activities;

(7) reimbursing crime victims for expenses incurred as a result of the crime;

(8) most medical costs. Grantees may not use grant funds for nursing-home care (except for short-term emergency), home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical or dental treatment. Grant funds cannot support medical costs resulting from a crime, except for forensic medial examinations for sexual assault victims;

(9) relocation expenses. Grant funds cannot support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments;

(10) administrative staff expenses. Grantees may not use grant funds to pay salaries, fees and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantees incur the expenses while providing direct services to crime victims. Grant funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports and statistics, administrative time to maintain crime victims' records, and the prorated share of audit costs;

(11) development of protocols, interagency agreements, and other working agreements;

(12) costs of sending individual crime victims to conferences;

(13) activities exclusively related to crime prevention or community awareness;

(14) non-emergency legal representation such as for divorces or civil restitution recovery efforts;

(15) victim-offender meetings that serve to replace criminal justice proceedings;

(16) management and administrative training for executive directors, board members, and other individuals that do not provide direct services;

(17) training to persons or groups outside the applicant agency;

(18) indirect organization costs such as the following: liability insurance on buildings; major maintenance of buildings; capital improvements; newsletters, including supplies, printing, postage, and staff time; security guards and body guards; and employment agency fees;

(19) any activities or related costs for diligent search;

(20) job skills training;

(21) alcohol and drug abuse treatment; and

(22) fundraising activities.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Hospital districts;

(4) Nonprofit corporations;

(5) Native American tribes;

(6) Crime control and prevention districts;

(7) Universities;

(8) Colleges;

(9) Community supervision and corrections departments;

(10) Councils of governments that offer direct services to victims of crime;

(11) Hospital and emergency medical facilities that offer crisis counseling, support groups, and/or other types of victims services; and

(12) Faith-based organizations that provide direct services to victims of crime. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Requirements: All applicants must meet each of the following criteria:

(1) have a record of providing effective services to victims. (If not, the applicant must show that at least twenty-five percent (25%) of its financial support comes from non-federal sources.);

(2) use volunteers;

(3) promote community efforts to aid crime victims;

(4) assist with crime victims compensation;

(5) maintain and display civil rights information;

(6) provide equal services to federal crime victims;

(7) provide grant funded services at no charge;

(8) maintain the confidentiality of client-counselor information and research data; and

(9) does not discriminate against victims because they disagree with the way the State is prosecuting the criminal case.

Project Period: Grant-funded projects must begin on or after July 1, 2004, and will expire on or before June 30, 2005.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site address located at http://www.governor.state.tx.us.

Preferences: Preference will be given to applicants who:

(1) demonstrate cost effective programs focused on a comprehensive and effective approach to services; and

(2) focus on providing direct services and assistance to victims of crime and aiding them through the criminal justice process.

Closing Date for Receipt of Applications: All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division via e-mail at cjdapps@governor.state.tx.us on or before December 1, 2003. Applicants must also submit the "Grant Application Certification Form" signed by the Authorized Official directly via facsimile at (512) 475-2440 or mail to the Office of the Governor, Criminal

Justice Division on or before December 1, 2003. The mailing address is: P.O. Box 12428, Austin, Texas 78711; and the physical address is: 1100 San Jacinto Boulevard, 2nd Floor, Austin, Texas 78701.

Selection Process:

(1) Upon submission to CJD, all applications are reviewed for eligibility. A "Determine Eligibility Form" is included with the application kit and must be completed in its entirety for the application to be considered for funding.

(2) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) The executive committee of the COG will approve the "Priority Listing" of recommended grant applications for funding and will forward this list to CJD.

(d) CJD will make all final funding decisions based upon COG priorities, reasonableness, availability of funding, and cost-effectiveness.

(3) For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact person: If additional information is needed, contact Angie Martin at amartin@governor.state.tx.us or (512) 463-1919.

TRD-200307024
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: October 22, 2003

♦ ♦ ♦

## Texas Department of Health

### Designation of Northwest Assistance Ministries Children's Clinic as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Northwest Assistance Ministries Children's Clinic, 15555 Kuykendahl, Houston, Texas, 77090. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Bruce Gunn, Ph.D., Director, Health Professions Resource Center, Center for Health Statistics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200306982
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 22, 2003

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### 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 |
|---|---|---|---|---|---|
| Beaumont | Timothy K Colgan MD PA | L05706 | Beaumont | 00 | 10/10/03 |
| Houston | Felipe Rios MD | L05700 | Houston | 00 | 10/10/03 |
| Katy | Memorial City Cardiology Associates | L05713 | Katy | 00 | 10/10/03 |
| Odessa | Alliance Hospital LTD | L05698 | Odessa | 00 | 10/02/03 |
| Plano | Dallas Cardiology Associates | L05699 | Plano | 00 | 10/01/03 |
| Richardson | Metroscan of Richardson LLC | L05688 | Richardson | 00 | 10/03/03 |
| Sugar Land | Fort Bend Heart & Vascular Clinic | L05678 | Sugar Land | 00 | 10/02/03 |
| Sulphur Springs | Medical Surgical Clinic of Sulphur Springs | L05701 | Sulphur Springs | 00 | 10/09/03 |
| Throughout TX | Aitec USA Inc | L05718 | Houston | 00 | 10/07/03 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Amarillo | The Don and Sybil Harrington Cancer Center | L03053 | Amarillo | 31 | 10/08/03 |
| Arlington | Arlington Memorial Hospital Foundation Inc. | L02217 | Arlington | 74 | 10/13/03 |
| Arlington | Columbia Med Ctr of Arlington Subsidiary LP | L02228 | Arlington | 56 | 10/03/03 |
| Austin | The UT at Austin Enviornmental Hlth & Safety | L00485 | Austin | 65 | 10/07/03 |
| Austin | Austin Texas Radiation Oncology Group PA | L01761 | Austin | 51 | 10/03/03 |
| Austin | HTI/ADC Venture | L04910 | Austin | 36 | 09/30/03 |
| Austin | Texas Oncology PA | L05696 | Austin | 01 | 09/30/03 |
| Bedford | Columbia N Hills Outpatient Imaging Ctr Subsidiary LP | L03455 | Bedford | 36 | 10/02/03 |
| Conroe | Sadler Clinic | L04899 | Conroe | 18 | 10/08/03 |
| Dallas | Cardiovascular Consultants LLP | L04627 | Dallas | 11 | 10/10/03 |
| Dallas | Environmental Health Center-Dallas | L05327 | Dallas | 03 | 10/10/03 |
| Dallas | Medical City Dallas Hospital | L01976 | Dallas | 146 | 10/02/03 |
| El Paso | El Paso Healthcare System LTD | L02715 | El Paso | 57 | 10/09/03 |
| El Paso | Providence Memorial Hospital | L02353 | El Paso | 76 | 10/09/03 |
| Fort Worth | Cardiology Associates of Fort Worth PA | L05480 | Fort Worth | 05 | 10/08/03 |
| Fort Worth | Fort Worth Surgicare Partners LTD | L05668 | Fort Worth | 01 | 10/10/03 |
| Fort Worth | John Peter Smith Hospital | L02208 | Fort Worth | 45 | 10/08/03 |
| Fredericksburg | Fredericksburg Imaging Center | L03516 | Fredericksburg | 26 | 09/30/03 |
| Haltom City | Richardson Associates | L02889 | Haltom City | 18 | 10/03/03 |
| Houston | Tenet Healthcare LTD | L02432 | Houston | 36 | 10/10/03 |
| Houston | Northwest Houston Heart Center PLLC | L04253 | Houston | 16 | 10/10/03 |
| Houston | Mallinckrodt Medical Inc | L03008 | Houston | 63 | 10/08/03 |
| Houston | American Diagnostic Tech LLC | L05514 | Houston | 09 | 10/07/03 |
| Houston | Southwest Cardiovascular Consultants PA | L05396 | Houston | 03 | 10/06/03 |
| Houston | Houston Medical Imaging | L05184 | Houston | 03 | 10/03/03 |
| Houston | Baker Hughes Inteq | L04452 | Houston | 36 | 10/02/03 |
| Houston | Valentina Ugolini MD | L05093 | Houston | 10 | 09/10/03 |
| La Porte | E I Du Pont De Nemours & Company | L00314 | La Porte | 75 | 10/03/03 |
| Lake Jackson | Non Destructive Inspection Corporation | L02712 | Lake Jackson | 110 | 10/09/03 |
| Laredo | McAllen PET Imaging Center LLC | L05460 | Laredo | 05 | 10/10/03 |
| Lubbock | University Medical Center | L04719 | Lubbock | 64 | 10/14/03 |

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Lubbock | University Medical Center | L04719 | Lubbock | 63 | 10/13/03 |
| Lubbock | Methodist Diagnostic Imaging | L03948 | Lubbock | 33 | 10/09/03 |
| Lubbock | Isorx Radiopharmacy | L05284 | Lubbock | 10 | 10/02/03 |
| Lubbock | Covenant Health System | L01547 | Lubbock | 75 | 09/30/03 |
| Lubbock | University Medical Center | L04719 | Lubbock | 62 | 09/30/03 |
| Mesquite | HMA Mesquite Hospitals Inc | L02428 | Mesquite | 33 | 10/02/03 |
| N Richland Hills | Columbia North Hills Hospital Subsidiary LP | L02271 | N Richland Hills | 43 | 10/03/03 |
| Odessa | Ector County Hospital District | L01223 | Odessa | 75 | 10/02/03 |
| Plano | Columbia Medical Ctr of Plano Subsidiary LP | L02032 | Plano | 68 | 10/07/03 |
| Port Arthur | Christus St Mary Hospital | L01212 | Port Arthur | 79 | 10/10/03 |
| Port Arthur | Beaumont Hospital Holdings Inc | L01707 | Port Arthur | 47 | 09/30/03 |
| Round Rock | Columbia/St Davids Healthcare System LP | L03469 | Round Rock | 33 | 10/06/03 |
| San Antonio | VHS San Antonio Partners LP | L00455 | San Antonio | 125 | 10/08/03 |
| San Antonio | Baptist Imaging Center | L04506 | San Antonio | 41 | 10/01/03 |
| Smithville | Smithville Regional Hospital | L04428 | Smithville | 11 | 09/26/03 |
| Temple | Kings Daughters Hospital | L00666 | Temple | 42 | 10/09/03 |
| Texarkana | New Hope Enterprises LTD | L05560 | Texarkana | 03 | 10/08/03 |
| Texarkana | Wadley Regional Medical Center | L02486 | Texarkana | 39 | 10/07/03 |
| Throughout TX | Guidant Corporation VI | L05178 | Houston | 14 | 10/13/03 |
| Throughout TX | TAMU Environmental Health & Safety Dept | L05683 | College Station | 01 | 10/10/03 |
| Throughout TX | Conam Inspection & Engineering Inc | L05010 | Pasadena | 63 | 10/13/03 |
| Throughout TX | Scientific Drilling International | L05105 | Houston | 05 | 10/10/03 |
| Throughout TX | Ludlum Measurements Inc | L01963 | Sweetwater | 64 | 10/10/03 |
| Throughout TX | Peachtree Construction Co | L05401 | N Richland Hills | 02 | 10/08/03 |
| Throughout TX | H&H X-Ray Services Inc | L02516 | Tyler | 42 | 10/08/03 |
| Throughout TX | Kleinfelder | L01351 | Austin | 46 | 10/06/03 |
| Throughout TX | Texas Gamma Ray LLC | L05561 | Pasadena | 29 | 10/06/03 |
| Throughout TX | Varco LP | L00287 | Houston | 113 | 10/03/03 |
| Throughout TX | Stork Southwestern Laboratories Inc | L05269 | Houston | 05 | 10/03/03 |
| Throughout TX | Midwest Inspection Services | L03120 | Perryton | 71 | 10/03/03 |
| Throughout TX | Tx Dept of Trans Construction Div Materials Sect | L00197 | Austin | 95 | 10/02/03 |
| Throughout TX | Rentech Bioler Services Inc | L05624 | Abilene | 01 | 10/03/03 |
| Throughout TX | GCT Inspection Inc | L02378 | South Houston | 75 | 10/03/03 |
| Throughout TX | Protechnics | L03835 | Houston | 41 | 10/03/03 |
| Throughout TX | Lindsey Contractors Inc | L05343 | Waco | 03 | 09/30/03 |
| Throughout TX | Street and Associates Inc | L05634 | Perryton | 01 | 09/30/03 |
| Throughout TX | Longview Inspection Inc. | L01774 | La Porte | 198 | 10/01/03 |
| Throughout TX | The Whole Computer | L05244 | San Antonio | 04 | 10/01/03 |
| Throughout TX | Non Destructive Inspection Corporation | L02712 | Lake Jackson | 109 | 09/30/03 |
| Throughout TX | Texas Gamma Ray LLC | L05561 | Pasadena | 28 | 09/30/03 |
| Throughout TX | Expro Americas | L05611 | Alice | 02 | 10/01/03 |
| Throughout TX | All American Inspection Inc | L01336 | San Antonio | 47 | 10/02/03 |
| Tyler | Cardiovascular Associates of East Texas PA | L04800 | Tyler | 11 | 10/10/03 |
| Tyler | East Texas Medical Center | L00977 | Tyler | 99 | 10/08/03 |
| Tyler | Trinity Mother Frances Health System | L01670 | Tyler | 105 | 10/06/03 |
| Wharton | Wharton Hospital Corporation | L01388 | Wharton | 39 | 09/30/03 |
| Wichita Falls | United Regional Health Care System Inc | L00350 | Wichita Falls | 90 | 10/03/03 |

RENEWAL OF LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Beaumont | Health South Diagnostic Center of Texas LP | L03888 | Beaumont | 31 | 10/06/03 |
| Glen Rose | Somervell County Health Care Authority | L03225 | Glen Rose | 16 | 10/14/03 |
| Houston | Delta Tubular International L.P. | L03083 | Houston | 22 | 10/13/03 |
| Ingleside | E I Du Pont De Nemours & Company | L01753 | Ingleside | 34 | 10/06/03 |
| Kingsville | Christus Spohn Health System | L02917 | Kingsville | 34 | 10/09/03 |
| Robstown | Pipe Reclamation Inc | L04684 | Robstown | 08 | 10/09/03 |
| Throughout TX | Industrial Nuclear Company | L04508 | Houston | 03 | 10/09/03 |
| Throughout TX | East Texas Asphalt Company | L04710 | Lufkin | 11 | 10/06/03 |
| Throughout TX | Texas Genco Holdings Inc. | L02063 | Houston | 60 | 10/03/03 |
| White Oak | Wren Oilfield Services | L04690 | White Oak | 05 | 10/09/03 |

TERMINATIONS OF LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Lakewood | New Millenium Nuclear Technologies LLP | L05605 | Lakewood | 02 | 10/07/03 |
| Magnolia | South Texas Phoenix Surveys | L05557 | Magnolia | 01 | 10/01/03 |

LICENSE EXEMPTION ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Dallas | Fugro South Inc | L03461 | Dallas | | 09/30/03 |
| San Antonio | Infrastructure Services Department | L02109 | San Antonio | | 09/30/03 |

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-200306956
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 21, 2003

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Notice of Agreed Order with TWM Health Services, Inc.

On September 18, 2003, the director of the Bureau of Radiation Control (bureau), Texas Department of Health, approved the settlement

agreement between the bureau and TWM Health Services, Inc. (registrant-R23651) of Mont Belview. The registrant was required to pay $1,500 in administrative penalties assessed for violations of 25 Texas Administrative Code, Chapter 289, plus past annual fees and a late payment penalty.

A copy of all relevant material is available, by appointment, for public inspection Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200306954
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 21, 2003

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### Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Radiation Oncology of the South Plains, P.A., dba PET Imaging Center of Lubbock

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Radiation Oncology of the South Plains, P.A., doing business as PET Imaging Center of Lubbock (licensee-L05418) of Lubbock. A total penalty of $5,000 is proposed to be assessed the licensee for alleged violations of radioactive materials license conditions and 25 Texas Administrative Code, Chapter 289.

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-200306955
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 21, 2003

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## Texas Health and Human Services Commission

### Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of Request for Proposals (RFP) #529-04-247 for consulting services to provide an assessment of Medicaid Managed Care Provider Network Adequacy and Out-of-network Reasonable Reimbursement Rates.

The Contractor selected as a result of this RFP will assist HHSC to achieve the following:

Determine maximum limits for out-of-network access by provider type and service delivery area for health services provided by the managed care organization;

Develop objective standards for determining network adequacy by provider type and service delivery area;

Develop reasonable reimbursement methodology for payment of out-of-network services provided by provider type and service delivery area;

Review and analyze provider complaints related to inadequate provider network and out-of-network reimbursement, and establish criteria for HHSC to apply prospectively; and

Develop a standard protocol for a corrective action plan for managed care organizations that fail to maintain an adequate provider network or that do not reimburse out-of-network providers based on a reasonable rate methodology.

The RFP will be posted with the Texas Marketplace: http://www.marketplace.state.tx.us on or about October 23, 2003. The full content of the RFP will be available on the HHSC website: http://www.hhsc.state.tx.us/medicaid/rfp/52904247/rfp_home.html

The successful respondent will be expected to begin performance of the contract on or after December 8, 2003. Parties interested in submitting a proposal may contact Audra Bryant, Procurement Manager, Health and Human Services Commission, 12555 Riata Vista, Austin, Texas 78727, telephone number: (512) 338-6514, fax (512) 338-6570, email Audra.Bryant@hhsc.state.tx.us regarding the request. Ms. Bryant will be HHSC's sole point-of-contact for purposes of this procurement. All questions regarding the RFP must be sent in writing to the above referenced contact by 5:00 P.M. Central Time on November 6, 2003. HHSC will post all written questions received with HHSC's responses on its website on November 10, 2003, or as they become available. HHSC will hold a vendor conference on November 5, 2003, from 10: A.M. to 12:00 P.M. in the Public Hearing Room at the Health and Human Services Commission, 12555 Riata Vista Circle, Austin, TX 78727. Attendance at the vendor conference is encouraged but not mandatory.

To be considered, all proposals must be received at the foregoing address in the issuing office on or before 5:00 p.m. Central Time on November 18, 2003. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

The anticipated schedule of events is as follows:

Final RFP Release Date - October 23, 2003

Vendor Conference - November 5, 2003

Vendor Questions Due - November 6, 2003

Vendor Proposals Due - November 18, 2003

Anticipated Contract Award - November 26, 2003

Anticipated Contract Start Date - December 8, 2003

TRD-200306979
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: October 22, 2003

♦ ♦ ♦

### Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for "Study of Feasibility of Facility Closures and Consolidations" (RFP #529-04-249).

HHSC seeks to employ a professional consultant to study the feasibility of the closure and consolidation of certain state hospitals and state schools. HHSC is directed to study the feasibility of such closures and consolidations pursuant to Rider 55 of the Health and Human Services Commission's appropriation under H.B. 1, 78th Texas Legislature, Regular Session. The consultant will study the feasibility of such closures and consolidations, in accordance with the criteria set forth in the rider; conduct site visits to state schools and hospitals; meet with effected community leaders to discuss implications and opportunities relating to closures and consolidations; and prepare a report with recommendations and explanations concerning specific facilities, and identifying costs, savings, and (if any) reductions in the waiver waiting list.

The RFP is located in full on HHSC's website at

http://www.hhsc.state.tx.us/about_hhsc/contracting/52904249/rfp_home.html. HHSC also posted notice of the procurement on the Texas Marketplace on www.marketplace.state.tx.us. The successful proposer will be expected to begin performance on or after December 30, 2003, and to deliver its final report to HHSC by June 30, 2003.

HHSC's sole point-of-contact for this procurement is:

Tom Valentine

Texas Health and Human Services Commission

4900 North Lamer Boulevard, 4th Floor

Austin, Texas 78751

(512) 424-6529

Fax (512)424-6590

tom.valentine@hhsc.state.tx.us

All questions regarding the RFP must be sent in writing to the above-referenced contact by 5:00 p.m. Central Time on November 12, 2003. HHSC will post all written questions received with HHSC's responses on its website on November 18, 2003, or as they become available. All proposals must be received at the above-referenced address on or before 5:00 p.m. Central Time on December 3, 2003. Proposals received after this time and date will not be considered.

HHSC will hold a Vendor Conference on November 6, 2003 from 3:00 p.m. to 5:00 p.m. in the Public Hearing Room at the Brown Heatly State Office Building, 4900 North Lamar Boulevard, Austin, Texas. Attendance at the Vendor Conference is encouraged, but not mandatory.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200306980
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: October 22, 2003

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## Texas Department of Housing and Community Affairs

Notice of Public Hearing

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (PROVIDENCE AT VETERANS MEMORIAL APARTMENTS) SERIES 2004**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Link Elementary School, 2815 Ridge Hollow, Houston, Texas 77067, at 6:00 p.m. on November 18, 2003 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Trails of Sycamore Townhomes Limited Partnership, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a high quality, gated, controlled access, multifamily housing development with full perimeter fencing (the "Development") described as follows: 250-unit multifamily residential rental development to be located in the southwest quadrant of the intersection of Veterans Memorial Parkway and Gears Road, Houston, Harris County, Texas, 77067. The Development will initially be owned by the Borrower. The Borrower is a for profit entity subject to property taxes by all applicable taxing jurisdictions. The Developer, Provident Realty Advisors, Inc., can be reached at 5400 LBJ Freeway, 975 One Lincoln Center, Dallas, Texas 75240; Attn: Matt Harris 972-239-8500, ext. 131; and/or mharris@providentrealty.net. Your questions and comments about the Development are encouraged.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer: at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or rmeyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200306968
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 22, 2003

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Notice of Public Hearing

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS SINGLE FAMILY MORTGAGE REVENUE REFUNDING TAX-EXEMPT COMMERCIAL PAPER NOTES, SERIES A (AMT) AND SERIES B (NON-AMT)**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS RESIDENTIAL MORTGAGE REVENUE BONDS**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 507 Sabine Street, Room 436, Austin, Texas, at 12:00 p.m. on December 2, 2003, with respect to (i) an amendment to the Department's Commercial Paper Notes plan of financing (the "Plan") to increase to $200,000,000 the aggregate amount of single family mortgage revenue refunding tax-exempt commercial paper notes (the "Future Notes"), that may be outstanding at any one time and to provide that proceeds of the Future Notes may be issued, refunded and ultimately used to make single family residential mortgage loans, and (ii) an issue of tax-exempt residential mortgage revenue bonds (the "Bonds") to be issued in an aggregate face amount of not more than $105,000,000.

The Future Notes will be issued by the Department in a maximum aggregate face amount not to exceed $200,000,000 outstanding at any given time with a maturity date no later than December 31, 2007. The proceeds of the Future Notes will be used for one or more of the following purposes: (a) to refund certain single family mortgage revenue bonds of the Department and thereby to recycle prepayments of loans made with the proceeds of such bonds in order to provide single family residential mortgage loans; (b) to refund certain single family mortgage revenue bonds previously issued by the Department and thereby to recycle unexpended proceeds of such bonds in order to provide single family residential mortgage loans; and (c) to provide single family residential mortgage loans. For purposes of clause (a) above, only prepayments of mortgage loans financed with proceeds of tax-exempt mortgage revenue bonds issued within ten years from the date of receipt of the prepayments will be eligible for the recycling program. The proceeds of the Bonds will be used to make single family residential mortgage loans expected to be in an aggregate estimated amount of $105,000,000.

All of the single family residential mortgage loans described above will be made to eligible very low, low and moderate income first-time home buyers for the purchase of homes located within the State of Texas.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income. The Department anticipates setting aside approximately 30% of the funds made available for borrowers of very low income (60% of area median income) for approximately one year. In addition, substantially all of the borrowers under the programs will be required to be persons who have not owned a principal residence during the preceding three years. Further, residences financed with loans under the programs will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program and the issuance of the Future Notes and the Bonds. Questions or requests for additional information may be directed to Matt Pogor at the Texas Department of Housing and Community Affairs, 507 Sabine Street, 9th Floor, Austin, Texas 78701; (512) 475-3987.

Persons who intend to appear at the hearing and express their views are invited to contact Matt Pogor in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Matt Pogor prior to the date scheduled for the hearing.

TDHCA WEBSITE: www.tdhca.state.tx.us/hf.htm

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of State law and Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Future Notes and the Bonds.

TRD-200306984
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 22, 2002

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## Texas Department of Insurance

### Company Licensing

Application to change the name of ONE HEALTH PLAN OF TEXAS, INC. to GREAT-WEST HEALTHCARE OF TEXAS, INC., a domestic Health Maintenance Organization. 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-200306976
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 22, 2003

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### Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Mid-Century Insurance Company of Texas 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 the flex percentages benchmark (0) to +118 by coverage and territory. The overall rate change is +8.9%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

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 November 17, 2003.

TRD-200306947
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 20, 2003

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## Texas State Board of Public Accountancy

### Notice of Cancellation of the Public Hearing Concerning 22 TAC §§523.41, 523.42, and 523.43

Notice is hereby given that the Texas State Board of Public Accountancy is canceling the public hearing that was to be held in Austin, Texas, November 11, 2003, from 10:00 a.m. until 12:00 p.m. at the Hobby Building, 333 Guadalupe, Room 100 (First Floor) Austin, Texas, 78701 that was noticed in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8439). The purpose of this hearing was to receive testimony regarding revisions to 22 TAC §523.41, proposed §523.42 and §523.43 concerning Board Rules and Ethics Course; Course Content and Board Approval after January 1, 2004; and Course Content and Board Approval. This hearing will be rescheduled at a later date.

For further information, please contact Rande K. Herrell, General Counsel at (512) 305-7848.

TRD-200306965
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Filed: October 21, 2003

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## Public Utility Commission of Texas

### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 17, 2003, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Solaro Energy Marketing Corporation for Retail Electric Provider (REP) certification, Docket Number 28788 before the Public Utility Commission of Texas.

Applicant's requested service area is by customers.

Persons wishing 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 November 7, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28788.

TRD-200306962
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 21, 2003

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### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On October 13, 2003, Williams Local Network, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60346. Applicant intends to reflect a change in control of its ultimate parent company, and a name change to WilTel Local Network, LLC.

The Application: Application of Williams Local Network, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 28716.

Persons wishing to comment on 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 November 5, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28716.

TRD-200306898
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 17, 2003

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### Notice of Application for Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 15, 2003, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101- 39.109. A summary of the application follows.

Docket Title and Number: Application of Trizec Holdings, Incorporated for Retail Electric Provider (REP) certification, Docket Number 28758 before the Public Utility Commission of Texas.

Applicant's requested service area is an area of specific transmission and distribution utilities and/or municipal utilities or electric cooperatives in which competition is offered as follows: CenterPoint Energy and Oncor Energy.

Persons wishing 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 November 7, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28758.

TRD-200306943
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 2003

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### Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On October 14, 2003, Valor Business Solutions filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60409. Applicant intends to relinquish its certificate.

The Application: Application of Valor Business Solutions to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 28748.

Persons wishing to comment on 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 November 5, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28748.

TRD-200306897
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 17, 2003

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## Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 15, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Advanced Integrated Technologies, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 28754 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC Texas, Verizon, United Telephone, and Central Telephone Company of Texas, doing business as Sprint.

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 November 5, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28754.

TRD-200306896
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 17, 2003

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## Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 16, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Blonder Tongue Telephone, LLC for a Service Provider Certificate of Operating Authority, Docket Number 28768 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, Optical Services, T1-Private Line, and long distance services.

Applicant's requested SPCOA geographic area includes the area comprising the Dallas Local Access and Transport Area within the State of Texas.

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 November 5, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28768.

TRD-200306944
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 2003

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## Public Notice of Amendment to Interconnection Agreement

On October 14, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Connect Paging, Inc. doing business as Get a Phone, collectively referred to as applicants, filed a joint application for approval of amendment to an existing 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 28739. 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 amendment to 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 28739. 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 November 14, 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 28739.

TRD-200306895
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 17, 2003

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## Public Notice of Amendment to Interconnection Agreement

On October 17, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Phone Remedies, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing 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 28786. 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 amendment to 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 28786. 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 November 19, 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 28786.

TRD-200306946
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 2003

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## Public Notice of Interconnection Agreement

On October 15, 2003, Blossom Telephone Company and T-Mobile USA, Incorporated formerly known as Voicestream Wireless Corporation, 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 28759. 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 28759. 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 November 17, 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 28759.

TRD-200306894
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 17, 2003

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### Public Notice of Interconnection Agreement

On October 17, 2003, Peoples Telephone Cooperative, Incorporated and NPCR, Incorporated, doing business as Nextel Partners, 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 28785. 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 28785. 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 November 19, 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 28785.

TRD-200306945
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 2003

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### Public Notice of Workshop on Modifications to Electric and Telecommunications Low Income Discount Rules

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding the Low-income Discount Guide, on Friday, November 7, 2003, from 9:00 a.m. to 4:00 p.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 27711, *Modifications to Electric Low-income Discount Rules*, and Project Number 28056, *Modifications to Substantive Rule §26.412, Lifeline and Link-Up Services for Low-Income Discount Administration (LIDA)*, have been established in connection with this proceeding. The purpose of this workshop is to discuss the Low-income Discount Guide as contemplated in the rulemakings under Project Numbers 27711 and 28056. Interested parties should come prepared to discuss the contents of the draft Guide, its correlation to the substantive rules, and a schedule for input, editing and finalization of the Guide.

The commission shall make available in Central Records under Project Numbers 27711 and 28056, a copy of the draft for the Low-income Discount Guide, prior to the workshop.

Questions concerning the workshop or this notice should be referred to Lauren Clark, Retail Market Analyst, Retail Market Oversight Section, Electric Division, (512) 936-7401. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200306961
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 21, 2003

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## Texas Racing Commission

### Notice of Application Period

The Texas Racing Commission announces that the Commission will accept applications for a Class 2 horse racetrack license for Webb County. Under the Texas Racing Commission rules, the Commission may designate an application period of not more than 60 days in which

applications for a racetrack license may be filed. On October 21, 2003, the Commission established one 60-day application period. The application period begins at 8:00 a.m., December 1, 2003, and ends at 5:00 p.m., January 29, 2004.

For more information, contact Paula C. Flowerday, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 833-6699, fax (512) 833-6907, or 8505 Cross Park Dr., #110, Austin, Texas 78754-4594.

TRD-200306964
Nicole Galwardi
General Counsel
Texas Racing Commission
Filed: October 21, 2003

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## Office of the Secretary of State

### Notice of Submission of Texas Congressional Districts Plan to the U.S Department of Justice

The State of Texas has submitted its redistricting plans for Texas Congressional Districts, to the United States Department of Justice for its review under Section 5 of the federal Voting Rights Act, 42 USC §1973c.

A complete duplicate copy of the submission is available for public review in the Office of the Secretary of State, Elections Division, 208 East 10th Street, Suite 309, Austin, Texas 78701, (800) 252-VOTE (8683). The information will be available from 8:00 a.m. to 5:00 p.m., Monday through Friday. Any comments regarding the submission may be sent to:

Chief, Voting Section

Civil Rights Division

Department of Justice

Room 7254-NWB

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530

TRD-200306958
Ann McGeehan
Director of Elections Division
Office of the Secretary of State
Filed: October 21, 2003

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## Texas Department of Transportation

### Notice of Correction - Notice of Intent, SH 249 Expansion

The Texas Department of Transportation (TxDOT) published a Notice of Intent regarding the issuance of an Environmental Impact State for the SH 249 expansion, in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8712). The following is a corrected version of the Notice of Intent.

Pursuant to 43 TAC §2.43 (e)(3), the Texas Department of Transportation (TxDOT) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed project in the SH 249 corridor within Montgomery and Grimes Counties, Texas.

TxDOT, in cooperation with the Federal Highway Administration (FHWA), is considering improvements in the SH 249 corridor within Montgomery and Grimes Counties, Texas. The project study area is approximately 15 miles in length from SH 249 in Montgomery County to FM 1774 in Grimes County. Cities within the study area include Pinehurst, Magnolia, and Todd Mission.

A Major Investment Study (MIS) for the project was completed in 2002. The MIS evaluated modal, configuration, and route corridor alternatives within the overall study area and recommended an alternative which was the most feasible modal, configuration, and route corridor that met the regions transportation needs, while minimizing impacts to the surrounding environment. The most feasible corridor alternative studied in the MIS was selected based on the detailed evaluation of the viable alternatives, as well as public input. This corridor alternative encompasses two general-purpose lanes in each direction, including auxiliary lanes between on-ramps and off-ramps where appropriate. The EIS will study the overall SH 249 corridor with all corridor alternatives considered in detail and recommend the most feasible corridor. The EIS will also recommend a preferred alternative alignment within the most feasible corridor. The EIS is authorized pursuant to the Texas Transportation Commission Minute Order No. 104908 issued January 26, 1995.

A public scoping meeting will be held in December 2003. The purpose of the public scoping meeting is to request comments and identify issues that will be considered during the evaluation of alignment alternatives and preparation of the EIS. Persons who have special communication or accommodation needs, and who plan to attend the public meeting are asked to contact TxDOT at 713-802-5072 at least two business days prior to the meeting so that accommodations may be made. Large-scale maps of the project area will be displayed at the meeting. This will be the first in a series of meetings to solicit public comments on the proposed action. All interested citizens are encouraged to attend these meetings. In addition, a public hearing will be held. Public notice will be given regarding the time and place of the public hearing as well as any future public meetings. The Draft EIS will be available for public agency review and comment prior to the public hearing.

The EIS will evaluate potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation improvement), air, and noise impacts from construction equipment and operation of the facilities, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States including wetlands from right-of-way encroachment, impacts to historic and archeological resources, impacts to floodplains, and impacts and/or potential displacements to residents and businesses.

Letters describing the proposed action and soliciting comments will be sent to appropriate agencies, and private organizations as well as citizens who have previously expressed or are known to have interest in this proposal. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to TxDOT at the address provided.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be directed to Ms. Dianna F. Noble, P.E., Texas Department of Transportation, Environmental Affairs Division, 125 E. 11th Street, Austin, Texas 78701, Telephone (512) 416-2734.

TRD-200306971
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: October 22, 2003

♦ ♦ ♦

Public Notice - Notice of Intent, SH 35 EIS

Pursuant to 43 TAC §2.43 (e)(3), the Texas Department of Transportation (TxDOT) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed project to develop State Highway 35 from Bellfort Road in Harris County, Texas to Farm-to-Market Road 1462 in Brazoria County, Texas.

TxDOT, in cooperation with the Federal Highway Administration (FHWA), will prepare an Environmental Impact Statement (EIS) on a proposal for transportation improvements within the State Highway 35 corridor from Bellfort Road in Harris County to Farm-to-Market Road 1462 in Brazoria County. The EIS will be conducted concurrently with a Major Corridor Feasibility Study (MCFS) that will examine and evaluate all reasonable and feasible modal alternatives for transportation improvements within the State Highway 35 corridor from Interstate Highway 45 to State Highway 288 in Angleton. The EIS will not cover the entire limits of the MCFS because it is estimated that the facility will follow a new alignment from Bellfort Road to FM 1462 and the existing SH 35 alignment will be used for the remainder of the corridor. The proposed action could include a combination of highway, toll, and transit components for the facility of approximately 22 miles in length (limits of EIS). The majority of the corridor crosses heavily urbanized regions of Harris and Brazoria Counties. Cities and towns in the region include the cities of Houston, Brookside Village, Pearland, and Alvin.

The purpose of the proposed project is to improve mobility, relieve congestion, and provide multimodal transportation options for this rapidly developing area. In addition, the proposed project will serve as an additional hurricane evacuation route as well as improve the overall safety for commuters who use the corridor.

Alternatives to be studied include "No-action" (the no-build alternative), Transportation System Management (TSM)/Transportation Demand Management (TDM) alternative, mass transit alternative and roadway build alternatives. The EIS will evaluate potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation route improvement), air and noise impacts from construction equipment and operation of the facility, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United Stated including wetlands from right of way encroachment, impacts to historic and archeological resources, impacts to floodplains, and impacts and/or potential displacements to residents and businesses.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting will be held in January 2004 at a location to be determined at a later time. Public meetings and a public hearing will also be held on dates to be determined. Public notice will be given of the time and place of the meetings and hearing. Prior to the public hearing, the Draft EIS (DEIS) will be made available for public and agency review and comment. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to TxDOT at the address provided.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be directed to Dianna F. Noble, P.E., Texas Department of Transportation, Environmental Affairs Division, 125 E. 11th Street, Austin, Texas 78701; phone 512-416-2734.

TRD-200306972
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: October 22, 2003

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## Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee.

The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative positions: 1. Alternate Public Health Care Facility Representative, 2. Alternate Private Health Care Representative, 3. Alternate Osteopath Representative, 4. Alternate Chiropractor, 5. Primary and Alternate Dentist Representatives, 6. Primary and Alternate Pharmacist, 7. Alternate Occupational Therapist, 8. Alternate Medical Equipment Supplier Representative, 9. Alternate Employer Representative, 10. Alternate General Public 1 Representative, 11. Alternate Insurance Carrier, and 12. Alternate Acupuncturist.

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www/twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator at 512-804-4855 or Judy Bruce, Director, Medical Review at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate: a. Preparation of a suitable agenda. b. Planning MAC activities. c. Establishing meeting dates and calling meetings. d. Establishing subcommittees. e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200306953
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: October 20, 2003

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## Texas Youth Commission

### Request for Proposal: To Provide Parole Supervision and Services to TYC Youth

The Texas Youth Commission (TYC) is issuing a request for written proposals for parole supervision and services to TYC youth ages 10 - 21 across the State of Texas.

Description: The focus of the TYC RFP#2004-30 is to provide parole supervision and services to TYC youth. The program must serve males and females between the ages of 10 - 21 determined by TYC staff to be appropriate for parole supervision and services. Youth will be assigned to the program by TYC and TYC will provide a Common Application with attachments. The following is a profile of the youth that may be served by this request for proposals: 90% males and 10% females, median age at commitment 16, history of chronic or serious criminal offending and 73% ethnic minorities. Eligible applicants include corporations, private non-profit agencies, and private for profit agencies or individuals. The Texas Youth Commission encourages historically underutilized businesses (HUBs) to respond to this request for proposal. Proposals must be received no later than 5:00 p.m. C.S.T. December 1, 2003.

Evaluation and Selection. Proposals will be evaluated and selection based on the program description of services, applicant's qualifications and past experience, reasonableness and competitiveness of cost and resources demonstrating ability of applicant to commence immediate services. Only one contract will be awarded.

Contact Person: Request for Proposal packets and information may be obtained from Mark Higdon, Business Manager for Contract Programs, Texas Youth Commission, Post Office Box 4260, Austin, Texas 78765; (512) 424-6031.

Closing Date: The closing date for receipt of proposals is December 1, 2003 at 5:00 p.m. C.S.T.

TRD-200306899
Neil Nichols
Acting Executive Director
Texas Youth Commission
Filed: October 17, 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

**How to Cite**: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update**: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
***Part I. Texas Department of Human Services***
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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