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# TEXAS REGISTER

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William Riley  
4th Grade

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

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# 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>



**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 November 26, 2003

Appointed as Judge of the 28th Judicial District Court in Harris County, for a term to expire until the next General Election and until his successor shall be duly elected and qualified, Marc C. Carter of Houston. Mr. Carter is replacing Judge Ted Poe who resigned.

Appointed to the Texas Youth Commission for a term to expire August 31, 2009, Donald R. Bethel of Lamesa (replacing Charles Henry of Pampa whose term expired).

Appointed to the Texas Youth Commission for a term to expire August 31, 2009, William Mahomes, Jr. of Dallas (pursuant to SB 287, 78th Legislature Regular Session).

### Appointments for December 1, 2003

Appointed as Judge of the 288th Judicial District Court in Bexar County for a term until the next General Election and until her successor shall be duly elected and qualified, Lori (Cliffe) Massey of San Antonio. Ms. Massey is replacing Judge Frank Montalvo who was appointed to a federal bench.

Appointed to the Texas Motor Vehicle Board for a term to expire January 31, 2005, Cynthia Tyson Jenkins of Irving (replacing Robena Jackson who resigned).

Appointed to the Texas Motor Vehicle Board for a term to expire January 31, 2009, Mike Arismendez, Jr. of Shallowater (replacing Diane Dillard whose term expired).

TRD-200308257



## Proclamation 41-2974

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, Rick Perry, Governor of Texas, do hereby certify that excessive rain, flooding and tornadoes caused by severe storms on November 17-18, 2003, has caused a disaster in Fort Bend, Galveston, Harris, Newton and Jasper Counties, in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such disaster and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that disaster.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 21st day of November, 2003.

Rick Perry, Governor

Attested by: Geoffrey S. Connor, Secretary of State

TRD-200308233



# 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 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER J. MEDICAID THIRD PARTY RECOVERY

The Health and Human Services Commission (HHSC) proposes to amend Chapter 354 Subchapter J, concerning Medicaid Third Party Recovery. Specifically, the HHSC proposes amendments to Division 1, §§354.2301, §354.2302, Division 2, §§354.2311, 354.2313, 354.2315, Division 3, §354.2321, §354.2322, Division 4, §§354.2331-354.2334, Division 5, §§354.2341, 354.2343, 354.2344 and new Division 6, §§354.2354-354.2356. The proposed amendments are a result of House Bill 2292, 78th Legislature, 2003, Regular Session, which contained a number of provisions designed to increase the state's cost avoidance and recoveries under the Third Party Liability (TPL) program. The new rules require that the Commission bill all Medicare fiscal intermediaries, that long term care providers bill Medicare prior to billing Medicaid and appeal Medicare denials as directed by the State, and require, to the extent allowed by federal law, that providers bill third party health coverage or insurance prior to billing Medicaid.

The proposed amendment adds to Subchapter J, Division 6 §§354.2354 - 354.2356. Additionally, the Commission proposes non-substantive changes to Subchapter J, Divisions 1-5. All amendments to Divisions 1-5 only address terminology and updates to section references. They are administrative in nature and contain no programmatic impact.

Tom Suehs, Deputy Commissioner of Financial Services, has determined that during the 2004/05 biennium the changes, once implemented, will generate costs savings of (\$3.0) million in FY 2004, all funds, and (\$5.3) million in FY 2005, all funds. These estimates are based upon estimates made by the 78th Legislature. Their estimates were based, in part, upon research conducted by the Comptroller's office and published in the January 2003 e-Texas Limited Government, Unlimited Opportunity. We estimate that the rate of savings would continue at (\$5.3) million, a steady state, thereby creating total savings over a 5-year period of (\$24.5) million, all funds. There will be no effect to small or micro businesses.

Mr. Suehs has also determined that the public will benefit from adoption of the amendment. The anticipated public benefit will be to ensure that costs are contained in the Medicaid Title XIX program. The proposed amendment does contain substantive

changes for providers but is not expected to have any significant impact on access to care.

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

HHSC has determined that the proposed rule amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of governmental action and, therefore, does not constitute a taking under §2007.043 Government Code. HHSC believes that there is no impact to local government.

Comments on the proposal may be submitted to Tim Broadhurst, Third Party Liability Manager, Texas Health and Human Services Commission, PO Box 13247, Austin, Texas 78711-3247 or by telephone at 512-482-3311 within 30 days of publication of this proposal in the *Texas Register*.

#### DIVISION 1. GENERAL PROVISIONS

##### 1 TAC §354.2301, §354.2302

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

The proposed amendments affect the Texas Government Code, Chapter 531.0392, Section 32.050 of the Human Resources Code, and adds Section 32.0423 Human Resources Code.

##### §354.2301. *Basis and Purpose.*

This chapter implements the requirements of Texas Health & Human Services Commission [~~Texas Department of Health (department)~~] (Commission) under federal and state law to:

(1) set forth the requirements of Medicaid applicants and recipients, and representatives of applicants and recipients regarding assignment, identification, and cooperation with the Commission [~~department~~] in establishing third party liability and recovery;

(2) set forth the rights, restrictions, and limitations of providers to third party recovery; and

(3) establish the priority of distributions of third party recoveries, including distributions into a trust established under the provisions of the Social Security Act §1917(d)(4) (codified at 42 U.S.C 1396p(d)(4)).

##### §354.2302. *Definitions.*

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



(1) Applicant--An individual, or the parent or legal guardian of an individual, who has applied to the Commission [department] or another agency of the state for medical assistance from the Medicaid program.

(2) Commissioner--The Commissioner of the Texas Health & Human Services Commission. [Texas Department of Health]

(3) Commission--The Texas Health & Human Services Commission.

{(3) Department--The Texas Department of Health and its designee.}

(4) Provider--Any individual or entity enrolled with the Medicaid program to provide services to Medicaid recipients for which claims for payment are submitted to the Commission or its designee [department].

(5) Recipient--A person who has been certified as eligible to receive medical assistance from the Medicaid program by the Commission [department] or other agency of the state.

(6) State Plan--The comprehensive written statement submitted by the single state agency describing the nature and scope of the Medicaid program and giving assurances that the Medicaid program will be administered in compliance with Title XIX requirements and federal regulations.

(7) Third party--Any person, or the insurer of a person, who is or may be liable to [ø] pay all or part of the expenditures for medical assistance furnished under the State Plan.

(8) Third party claim--A demand or right of action which a Medicaid recipient may assert against a third party or third party health insurer.

(9) Third party health insurer--Any commercial insurance company offering health or casualty insurance to individuals or groups (including both experience-rated insurance contracts and indemnity contracts); any for profit or nonprofit prepaid plan offering either medical services or full or partial payment for medical services; and any organization administering health or casualty insurance plans for professional associations, unions, fraternal groups, employer-employee benefit plans, and any similar organization offering these payments or services, including self-insured and self-funded plans.

(10) Title IV-D agency--The Office of the Attorney General, the agency in the State of Texas with the responsibility for administering or supervising the administration of the State Plan for child support enforcement under Title IV-D of the Social Security Act.

(11) Plan administrator--A third-party administrator, prescription drug payer or administrator, pharmacy benefit manager, or a dental payer or administrator.

(12) Dual Eligible--For purposes of this section, a dually eligible recipient is one who has received, or is eligible to receive, benefits under both the Medicare and Medicaid programs.

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 December 1, 2003.

TRD-200308177

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 424-6576



## DIVISION 2. APPLICANT AND RECIPIENT REQUIREMENTS

### 1 TAC §§354.2311, 354.2313, 354.2315

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

The proposed amendments affect the Texas Government Code, Chapter 531.0392, Section 32.050 of the Human Resources Code, and adds Section 32.0423 Human Resources Code.

#### §354.2311. *Applicant and Recipient Assignment of Rights.*

As a condition for eligibility, each applicant for or recipient of Medicaid benefits assigns to the Commission [department] his or her rights, or the rights of any other individual eligible for Medicaid benefits under the State Plan for whom he or she can legally make an assignment, to medical support and payment for medical care from any third party health insurer or third party.

(1) No separate assignment from the applicant or recipient is required by the Commission [department] to enforce the Commission's [department's] right to recover amounts paid by the Commission [department] for the recipient's medical care.

(2) The Commission's [department's] right of recovery against a third party health insurer or third party is limited to the amount paid by the Commission [department] on all claims submitted for Medicaid-covered services by Medicaid providers for a recipient's medical care.

#### §354.2313. *Duty of Applicant or Recipient to Inform and Cooperate.*

(a) An applicant or recipient of Medicaid benefits has a duty and responsibility to inform the Commission or other State agency [department], at the time of application, during the period of eligibility, or at any time after receiving services from the Medicaid program, of the following:

(1) any pending or unsettled claim for injuries for which a claim for medical services has or will be submitted to the Medicaid program for payment;

(2) the name and address of any attorney the applicant or recipient hires to represent the applicant or recipient in any claim for injuries for which a claim for medical services has or will be submitted to the Medicaid program for payment;

(3) any court or administrative order requiring any person to make medical support payments to the recipient or the Title IV-D agency; this duty and responsibility does not apply to any woman defined in the §1905(n)(1) (poverty level pregnant women) (codified at 42 U.S.C 1396d(n)(1));

(4) the identity of the father of any child who is an applicant or recipient of Medicaid benefits, and to cooperate with the Title IV-D Agency in establishing paternity and medical support payments for the child;

(5) any third party health insurer or third party who is or may be responsible for paying for or providing health coverage to the applicant or recipient, including the name and relationship of the insured, the name of the policyholder, the policy number, the dates coverage is in effect, the date of occurrence of any accident or injury and any other information required by the Commission [department] or the third party health insurer or third party to file a claim or identify the recipient as an insured or covered person; and

(6) any other resource that is or becomes available to provide or pay for medical services covered by the Medicaid program.

(b) An applicant or recipient, or an attorney or other person who represents or acts on behalf of an applicant or recipient, must notify and provide information regarding the existence or potential existence of any of the resources listed in subsection (a) of this section. The applicant must provide the information at the time of application, and the recipient must provide notice and information within 60 days of learning of or discovering the existence of the resource, or at the time of re-certification, whichever is sooner. Notice may be provided to the Commission [department] either by telephone or by mail to the telephone number and mailing address listed in Subchapter J Division 4 §354.2334 [Subchapter D] of this chapter for notices and Commission [department] contact.

(c) An applicant or recipient will have his or her application for benefits denied, and a recipient will have his or her benefits terminated if the applicant or recipient fails or refuses to assign his or her own rights and/or those of any other individual for whom they can legally make an assignment, or fails or refuses to cooperate with the Commission [department] as required by subsection (a) of this section, unless cooperation is waived under the procedures specified at 45 Code of Federal Regulations, Part 232 for child support enforcement, or the Commission's [department's] procedures for waiving cooperation for any other individual.

(d) The existence of an unsettled claim for damages for personal injuries will not be used by the Commission [department] to deny or discontinue medical services under the Medicaid program.

*§354.2315. Duty of Attorney or Representative of a Recipient.*

(a) An attorney or other person who represents or acts on behalf of a recipient in a third party claim or action for damages for personal injuries, regardless of whether a legal action has been filed, for which medical services are provided and paid for by Medicaid must send written notice of representation to the Commission [department]. The written notice must be signed by the attorney or representative of the recipient and sent to the address listed in Subchapter J Division 4 §354.2334 [Subchapter D] of this chapter for notices and Commission [department] contact. The written notice must be submitted within 45 days from the date the attorney or representative undertakes representation of the recipient, or from the date a potential third party is identified. The written notice must include the following information, if known at the time of initial filing:

(1) the name and address and identifying information of the recipient (either the date of birth and the Social Security number, or the date of birth and the Medicaid identification number);

(2) the name and address of any third party or third party health insurer against whom a third party claim is or may be asserted for injuries to the Medicaid applicant or recipient;

(3) the name and address of any health care provider who has asserted a claim for payment provided to the Medicaid applicant or recipient for medical services provided to the Medicaid applicant or recipient for which a third party may be liable for payment, whether or

not the claim may have been submitted to or paid by the Commission [department]; and

(4) if any of the information described in subsection (a) of this section is unknown at the time the initial notice is filed, this should be indicated on the notice, and revised if and when the information becomes known.

(b) An authorization to release information relating to the recipient directly to the attorney or representative may be included as a part of the notice and must be signed by the recipient. A notice containing an authorization for release of information will be considered valid until revoked in writing by the recipient, and no separate authorization will be required of the recipient or the attorney or the representative at the time of a request for information.

(c) Any settlement, trust, judgment, order or distribution of proceeds which is required to be disclosed to the Commission [department] to carry out the purpose of this chapter is protected from further disclosure by the Commission [department] or its agents under the provisions of the Social Security Act, §1902(a)(7) (codified at 42 U.S.C 1396a(a)(7)), relating to restrictions on information disclosure).

(d) The Commission [department] must be paid all amounts owed under this chapter prior to placing any proceeds from a third party into a trust created under the provisions of the Social Security Act §1917(d)(4) (codified at 42 U.S.C 1396p(d)(4)), unless the Commission [department] agrees otherwise.

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 December 1, 2003.

TRD-200308178

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 424-6576



## DIVISION 3. PROVIDER REQUIREMENTS

### 1 TAC §354.2321, §354.2322

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

The proposed amendments affect the Texas Government Code, Chapter 531.0392, Section 32.050 of the Human Resources Code, and adds Section 32.0423 Human Resources Code.

*§354.2321. Provider Billing and Recovery from Third Party Health Insurer.*

(a) Providers must make a good faith effort to determine whether a recipient is or may be insured by a third party health insurer at the time services are provided, including examining the recipient's Medicaid eligibility card for third party resources and making reasonable oral or written inquiry of the recipient.

(b) If a third party health insurer is identified, providers are required to bill the third party health insurer before submitting a claim for payment to the Commission [department] under the provisions of Subchapter A, Division 1 §354.1003 [§29-3] of this title (relating to Time Limits for Submitted Claims) unless otherwise directed by the Commission [department].

(c) Providers who identify a third party, within 12 months from the date of service, and wish to submit a claim for payment to a third party health insurer after a claim for payment has been submitted and paid by the Commission [department], must refund any amounts paid by Medicaid prior to submitting a claim for payment to the third party insurer.

(d) Providers are limited to the Medicaid payable amount and the provider is required to accept the amount paid by the Commission [department] as payment in full if:

(1) a claim for payment is submitted to and paid by the Commission [department]; and

(2) the provider failed to inform the Commission [department] at the time the claim was filed, or any time thereafter, that a third party health insurer was also billed for the same service.

(e) Payments made by a third party health insurer to a provider who is limited to the Medicaid payable amount under subsection (d) of this section must be forwarded to the Commission [department] for distribution according to the provisions of Subchapter J Division 4 §354.2334 [Subchapter D] of this chapter.

(f) If the amount paid by a third party health insurer is less than the amount payable for the service by Medicaid, the Commission [department] may be billed for the difference between the amount paid by the third party health insurer and the Medicaid payable amount, if a claim was timely filed with the Commission [department] under the provisions of Subchapter A, Division 1 §354.1003 [§29-3] of this title.

(g) Any provider who accepts Medicaid payment as payment in full for services and retains any amount in excess of the Medicaid payable amount from a third party and conceals or fails to account to the Commission [department] for the third party amount, resulting in excessive or duplicate payment for the same service, may be referred for investigation and prosecution for violations of state and/or federal Medicaid or false claims laws.

(h) Providers are prohibited from submitting a bill, or other written demand for payment or collection of debt for any Medicaid-covered service from an individual who the provider knows or should know is a Medicaid eligible recipient or from the representative of a recipient, regardless of whether a claim for payment for the service is submitted to the Commission [department]. This section does not prohibit a provider from submitting reasonable inquiries or requests for information to a recipient, or representative of a recipient to assist the provider in identifying a third party insurer. However, any inquiry which would lead a reasonable person to believe that the provider was making a demand for payment, or attempting to collect an unpaid debt, will bring the provider within the limitations and prohibitions as follows:

(1) If a provider attempts to recover any amount from a recipient for any Medicaid-covered service, the Commission [department] may provide for a reduction of an amount otherwise payable to the provider in addition to referring the provider for investigation and prosecution for violations of state and/or federal Medicaid or false claims laws.

(2) The amount of the reduction may be up to three times the amount the provider sought in excess of the Medicaid payable amount.

(i) Eventual recovery, repayment or recoupment of money by the Commission [department] or the recipient will not release or preclude referral by the Commission [department] for investigation, prosecution or liability under any civil or criminal law which would otherwise apply to the unlawful conduct.

(j) The Commission [department] will not accept any claim for payment under this subsection submitted after 18 months from the date of service, regardless of whether an informational claim has been timely filed.

§354.2322. *Provider Billing and Recovery from Other Third Parties.*

(a) Providers must make a good faith effort to determine, at the time services are delivered or at any time thereafter, whether the services being provided to the recipient are a result of injuries caused by a person who is or may be liable for payment for the services.

(1) The good faith effort required by this section may be satisfied by examination and verification of the recipient's Medicaid eligibility card for third party resources and/or making reasonable oral or written inquiry of the recipient at the time services are provided.

(2) Providers must submit information relating to the existence or possible existence of third party liability obtained from the recipient or legal representative of the recipient at the time a claim is submitted to the Commission [department] for payment, or at any time thereafter, or when an informational claim is submitted under the provisions of Subchapter A, Division 1 §354.1003 [§29-3] of this title (relating to Time Limits for Submitted Claims).

(b) Providers are required to pursue recovery from third parties whose liability has been established or is undisputed, before submitting a claim for payment to the Commission [department] unless otherwise directed by the Commission [department].

(c) Providers who identify a third party, within 12 months from the date of service, and wish to submit a bill, or other written demand for payment or collection of debt to a third party after a claim for payment has been submitted and paid by the Commission [department], must: refund any amounts paid by Medicaid prior to submitting a bill or other written demand for payment or collection of debt to the third party for payment, and; comply with the provisions of subsection (d) of this section. This section does not prohibit a provider from filing a statutory provider lien or require a refund to Medicaid prior to submitting reasonable requests for information to a third party or a representative of a recipient to assess the likelihood of recovery from a third party.

(d) Providers may retain a payment from a third party in excess of the amount Medicaid would otherwise have paid only if the following requirements are met:

(1) the provider submits an informational claim to the Commission [department] within the claim filing deadline contained in Subchapter A, Division 1 §354.1003 [§29-3] of this title indicating the identity of the third party from whom recovery is being pursued;

(2) the provider gives notice to the recipient, or the attorney or representative of the recipient that the provider may not or will not submit a claim for payment to Medicaid and the provider may or will pursue a third party, if one is identified, for payment of the claim. The notice must contain a prominent disclosure that the provider is prohibited from billing the recipient or a representative of the recipient for any Medicaid-covered services, regardless of whether there is an eventual recovery or lack of recovery from the third party or Medicaid;

(3) the provider establishes its right to payment separate of any amounts claimed and established by the recipient; and

(4) the provider obtains a settlement or award in its own name separate from a settlement obtained by or on behalf of the recipient or award obtained by or on behalf of the recipient, or there is an agreement between the recipient or attorney or representative of the recipient and the provider, that specifies the amount which will be paid to the provider after a settlement or award is obtained by the recipient.

(e) Providers who have filed informational claims with the Commission [department] but have not made a recovery from a third party within 18 months from the date of service must make a choice before the end of the 18th month from the date of service to:

(1) continue to pursue a claim against the third party for payment and forego the right to submit a claim for payment to Medicaid; or

(2) convert the informational claim to a claim for payment from the Commission [department] and receive payment from the Commission [department] as payment in full for all Medicaid-covered services.

(f) Providers who pursue a third party for payment and who subsequently fail to recover from the third party within 18 months from the date of service, or recover less than the Medicaid payable amount within 18 months from the date of service, may submit a claim for payment to the Commission [department] for the difference between the amount recovered and the Medicaid payable amount, only if the requirements of subsection (c) and/or (d) of this section are met.

(g) Providers are limited to the Medicaid payable amount and the provider is required to accept the amount paid by the Commission [department] as payment in full if a claim for payment is submitted and paid by the Commission [department]:

(1) before a third party claim is paid; and

(2) the provider failed to comply with each of the requirements under subsection (c) and/or (d) of this section.

(h) Except as provided by subsection (c) of this section, payments made by third parties to a provider after the provider has been paid by the Commission [department] must be forwarded by the provider to the Commission [department] for distribution according to the provisions of Subchapter J Division 4 §354.2334 [Subchapter D] of this chapter.

(i) Any provider who accepts Medicaid payment as payment in full for services and retains any amount in excess of the Medicaid payable amount from a third party and conceals or fails to account to the Commission [department] for the third party amount, resulting in excessive or duplicate payment for the same service may be referred for investigation and prosecution for violations of state and/or federal Medicaid or false claims laws.

(j) Providers are prohibited from submitting a bill, or other written demand for payment or collection of debt for any Medicaid-covered service from an individual who the provider knows or should know is a Medicaid eligible recipient or from the legal representative of a recipient, regardless of whether a claim for payment for the service is submitted to the Commission [department]. This section does not prohibit a provider from submitting reasonable requests for information to a recipient, or representative of a recipient to assist the provider in identifying a third party. However, any inquiry which would lead a reasonable person to believe that the provider was making a demand for payment, or attempting to collect an unpaid debt, will bring the provider within the limitations and prohibitions as follows:

(1) If a provider attempts to recover any amount from a recipient for a Medicaid covered service the Commission [department] may provide for a reduction of an amount otherwise payable to the provider in addition to referring the provider for investigation and prosecution for violations of state and/or federal Medicaid or false claims laws.

(2) The amount of the reduction may be up to three times the amount the provider sought in excess of the Medicaid payable amount.

(3) In addition to the amount of any reduction in paragraphs (1) and (2) of this subsection, the provider may be referred for investigation and prosecution for violations of state and federal Medicaid or false claims laws.

(k) The Commission [department] will not accept and can not pay any claim for payment under this subsection submitted after 18 months from the date of service, regardless of whether an informational claim has been timely filed.

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 December 1, 2003.

TRD-200308179

Steve Aragón

General Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6576



## DIVISION 4. DUTIES OF THE COMMISSION

### 1 TAC §§354.2331 - 354.2334

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

The proposed amendments affect the Texas Government Code, Chapter 531.0392, Section 32.050 of the Human Resources Code, and adds Section 32.0423 Human Resources Code.

§354.2331. *Requests for Information.*

(a) The Commission [department] will provide assistance and cooperation to recipients, attorneys and representatives of recipients who seek recovery on behalf of the Commission [department] for amounts owed to the Commission [department] under this chapter. The Commission [department] will provide information, evidence and documents required to settle and receive judgment for the amounts owed the Commission [department] and provide appropriate and necessary releases and authorizations to settle and distribute amounts owed to the Commission [department] under this chapter.

(b) The Commission [department] is required to safeguard the best interests of the recipient under the provisions of Social Security Act §1902(a)(19) (codified at 42 U.S.C 1396a(a)(19)).

(c) The Commission [department] is required to provide safeguards which restrict the use and disclosure of information concerning

applicants and recipients to purposes directly connected with the administration of the Medicaid program under the provisions of Social Security Act §1902(a)(7) (codified at 42 U.S.C 1396a(a)(7)).

(d) Requests for information relating to third party recoveries under this chapter must fall within the requirements of subsections (a) and (b) of this section.

(e) A recipient or an attorney or representative of a recipient may request information relating to claims submitted or paid or payable by the Commission [department], and records within the custody and control of the Commission [department], as they relate to this chapter if:

(1) the request is signed by the recipient or a person with legal authority to act on behalf of the recipient; or

(2) the attorney or representative making the request has filed a notice which complies with the requirements of Subchapter J Division 4 §354.2315 [§28.203(e)] of this title (relating to Duty of Attorney or Representative of a Recipient).

(f) The Commission [department] will respond to all requests for information within 10 business days from receipt of the request. The Commission [department] will produce records and provide information to a person making a request under this section only if all requirements of this subsection are met. The Commission [department] will provide the requested information, if all requirements of this subsection are met, within 15 business days from receipt of the request.

(g) The Commission [department] has no duty produce records or provide information which do not meet the requirements of this subsection, or which would disclose information which the Commission [department] is prohibited from disclosing by state or federal law.

#### §354.2332. *Distribution of Recoveries.*

(a) The Commission [department] will distribute third party recoveries as follows:

(1) the Commission [department] will receive an amount equal to the Commission's [department's] Medicaid expenditures for the recipient, or another individual eligible for Medicaid benefits under the State Plan for whom he or she can legally make an assignment to medical support and payment;

(2) the federal government will receive the federal share of the Medicaid expenditures, minus any incentive payment authorized by federal law; and

(3) the recipient will receive any remaining amount. Any amount distributed to the recipient is income or resources for purposes of establishing eligibility for Medicaid benefits.

(b) The Commission [department] may pay reasonable and necessary attorney fees of fifteen percent (15%) of the entire amount recovered on behalf of the Commission [department], and reasonable expenses, to a person authorized to recover amounts from third parties, other than a person contracted by the Commission [department] to recover on behalf of the Commission [department], if the recovery is made in compliance with these rules.

(c) The Commission [department] may pay prorated expenses not to exceed ten percent (10%) of the entire amount recovered on behalf of the Commission [department] if attorney fees are allowed under subsection (b) of this section.

(d) No attorney fees will be paid if the recovery made on behalf of the Medicaid program is waived in whole or in part by the commissioner under the provisions of Subchapter J Division 4 §354.2333

~~§28.403~~ of this title (relating to Waiver Authority of the Commissioner).

(e) The amount recovered on behalf of the Commission [department], for which attorney fees are authorized under this section, must be deducted from the total amount of the recovery before attorney fees and expenses are deducted under the terms of the recipient's contract.

(f) The Commission [department] may pay reasonable and necessary attorney fees and expenses to a person contracted by the Commission [department] to recover amounts from third parties on behalf of the Medicaid program.

#### §354.2333. *Waiver Authority of the Commissioner.*

(a) The commissioner has the authority to waive all or part of the state's right to recover from liable third parties when the commissioner finds that enforcement of the state's right of recovery would tend to defeat the purpose of public assistance.

(b) The commissioner has the authority to waive all or part of the federal matching share of the Commission's [department] right to recovery from liable third parties only if the cost of recovery exceeds the amount, which could be recovered.

#### §354.2334. *Notices and Payments.*

Notices and payments required to be submitted to the Commission [department] under this chapter must be submitted to the following address: Texas Health & Human Services Commission, ATTN: Medicaid Third Party Liability, P.O. Box 13247, Austin, TX 78711-3247, telephone 1-877-511-8858 or 512-482-3274. [Texas Department of Health, 1100 West 49th Street, Austin, TX 78756-3171, Attention: Medicaid Third Party Recovery, telephone (512) 338-6497, facsimile (512) 338-6495.]

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 December 1, 2003.

TRD-200308180

Steve Aragón

General Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6576



## DIVISION 5. HEALTH INSURER REQUIREMENTS

### 1 TAC §§354.2341, 354.2343, 354.2344

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

The proposed amendments affect the Texas Government Code, Chapter 531.0392, Section 32.050 of the Human Resources Code, and adds Section 32.0423 Human Resources Code.

#### §354.2341. *Third Party Health Insurer Information Requirements.*

(a) Health insurers must maintain a file system that contains the following information for each policyholder or subscriber covered by the insurer:

(1) the name, address, social security number, and date of birth of each subscriber or policyholder and each dependant of each policyholder or subscriber;

(2) the name, address, including claim submission address, of the health insurer; and

(3) the name, address, and mailing address of the employer.

(b) The Commission [department] and health insurers from whom the Commission [department] requests information must enter into written agreements for the exchange of health insurance information relating to certified Medicaid recipients. The written agreements must contain the following mandatory terms and provisions:

(1) the Commission [department] agrees to reimburse an insurer for the necessary and reasonable costs incurred in providing information requested under this subchapter;

(2) the Commission [department] provides the insurer with Medicaid data tapes which contain identifying information of individuals whom the Commission [department] certifies are applicants or recipients of services under Medicaid, or are legally responsible for an applicant or recipient of Medicaid services;

(3) the information requested from the insurer is specifically identified and limited to information necessary to determine whether health benefits have been or should be claimed and paid under the health insurance policy or plan for medical care or services received by an individual for whom Medicaid services would otherwise be available;

(4) the agreement states the time the Commission [department] will request the data match and submit the Medicaid data tape to the insurer, and the manner in which the data match is to be conducted, and the time and the place where the information requested is to be produced to the Commission [department], and a method of verification of receipt by the Commission [department];

(5) the agreement limits the Commission [department] to not more than one data match every six months;

(6) the agreement contains a confidentiality agreement which prohibits the health insurer from using the information received from the Commission [department] for any purpose other than to data match insurer information against the Medicaid data tapes and prohibits any disclosure, reproduction or retention of the information for any purpose not directly related to the purpose of carrying out the requirements of the agreement;

(7) the agreement contains a confidentiality agreement which prohibits the Commission [department] from using the information received from the health insurer for any purpose other than to identify Medicaid applicants or recipients, and persons legally responsible for a Medicaid applicant or recipient, who have or may have health insurance coverage through the health insurer and prohibits the Commission [department] from further disclosure or use of the information except as required or authorized by state or federal law; and

(8) the agreement must contain a provision which requires the insurer to comply with a request for information not later than the 60th day following the date the request is made by the Commission [department].

(c) These sections apply to plan administrators in the same manner and to the same extent as an insurer if the plan administrator

has the information necessary to comply with the Commission's [department's] request for a data match.

*§354.2343. Administrative Penalties for Failure to Provide Information.*

(a) The Commission [department] may impose administrative penalties on an insurer who:

(1) does not comply with a request for data match information under a written agreement with the Commission [department] as required by the written agreement; and

(2) more than 180 days have passed since the date the request was made by the Commission [department]; or

(3) refuses to enter into a written agreement with the Commission [department] to provide information requested by the Commission [department] as required by Subchapter J Division 5 §354.2341(b) [§28.501(b)] of this title (relating to Third Party Insurers Information Requirements).

(b) If the insurer does not provide the requested information the administrative penalty will be assessed on a daily basis for each day of non-compliance beginning on the day following the 180th day the Commission [department] made a request for information, and continuing until the information is received by the Commission [department].

(1) The Commission's [department's] request for information may be made by any method which provides verification of receipt.

(2) The 180th day will be calculated from the date the Commission [department] obtains written or electronic verification of receipt by the insurer.

(c) The amount of the administrative penalty may not exceed \$10,000 per day for each day of non-compliance. The amount of the administrative penalty will be based on:

(1) the seriousness of the non-compliance, including the nature, circumstances, extent, and gravity of the non-compliance;

(2) the economic harm caused by the non-compliance;

(3) the history of previous non-compliance;

(4) the amount necessary to deter future non-compliance;

(5) efforts made by the insurer to correct the non-compliance; and

(6) other factors presented by the insurer or the Commission [department] which affect the amount and the appropriateness of the administrative penalty.

*§354.2344. Notice and Appeal of Administrative Penalty.*

(a) The Commission [department] will send the insurer a Notice of Administrative Penalty at least 30 days prior to the date that administrative penalties will begin to accrue. The notice will contain the following information:

(1) the date on which administrative penalties will begin to accrue if the information requested by the Commission [department] is not received on or before that date; and

(2) the amount of the administrative penalty which will be assessed for each day of non-compliance after the date indicated on the notice letter.

(b) If the insurer does not submit the information on or before the date on which administrative penalties begin to accrue, penalties will be assessed as stated in the notice letter.

(c) An insurer may request a hearing in writing within 20 days of receiving written notice from the Commission [department] of administrative penalty.

(d) If a hearing is requested, the hearing is a contested case under the Administrative Procedure Act, Government Code, Chapter 2001, and the Commission's [department's] formal hearing rules in Chapter 1 of this title (relating to Formal Hearings).

(e) If an insurer fails to submit a request for hearing within 20 days from the date of the notice letter, or fails to appear at a scheduled hearing, the right to a hearing is waived and the amount of penalties assessed per day of non-compliance is final.

(f) The order of administrative penalty will be reported to the attorney general for collection.

(g) The enforcement of the penalty may be stayed during the time the order is under judicial review if the insurer pays the penalty assessed as of the date of the order to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. An insurer who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the Commission [department] to contest the affidavit as provided by the Texas Rules of Civil Procedure.

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 December 1, 2003.

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



## DIVISION 6. BILLING AND PAYMENT GUIDELINES

### 1 TAC §§354.2354 - 354.2356

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

The proposed new rules affect the Texas Government Code, Chapter 531.0392, Section 32.050 of the Human Resources Code, and adds Section 32.0423 Human Resources Code.

#### §354.2354. Billing Medicare Fiscal Intermediaries.

The Commission shall pursue reimbursement of Medicaid expenditures from each fiscal intermediary who makes a payment to a service provider on behalf of the Medicare program, including a reimbursement for a payment made to a home health services provider or nursing facility for services rendered to a dually eligible individual.

#### §354.2355. Long Term Care Providers.

(a) A nursing facility, home health services provider, or any other similar long-term care services provider that is Medicare certified must:

(1) seek reimbursement from Medicare before billing the Medicaid Program for services provided to an individual who is eligible to receive similar services under the Medicare program.

(2) as directed by the Commission, appeal Medicare claim denials for payment

(b) A nursing facility, home health services provider, or any other similar long-term care services provider that is Medicare certified is not required to seek reimbursement from Medicare before billing the Medicaid Program for a person who is:

(1) Medicare eligible; and

(2) has been determined as not being homebound

(c) For services in subsection (a) of this section, a payment or denial remittance from Medicare is required prior to Medicaid considering payment.

#### §354.2356. Provider Requirements to Bill Third Party Health Coverage.

To the extent allowed by federal law, a health care service provider must seek reimbursement from any Third Party or Third Party Health Insurer that the provider knows about or should know about before billing the medical assistance 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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Steve Aragón  
General Counsel  
Texas Health and Human Services Commission  
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For further information, please call: (512) 424-6576



## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 403. GENERAL ADMINISTRATION

##### 16 TAC §403.401

The Texas Lottery Commission proposes amendments to 16 TAC §403.401, relating to use of commission vehicles. The proposed amendments require that an employee operating a commission motor vehicle must also submit all fuel and maintenance receipts to the commission vehicle fleet manager as well as the information already required by the rule. The proposed amendments also clarify that an employee operating a commission motor vehicle should enter beginning and ending date(s) in the commission's vehicle logbook. The proposed amendments also require the number of passengers to be entered in the logbook. The proposed amendments also delete requirements imposed on an agency employee to be eligible

to operate a commission vehicle since these requirements are more appropriately included in an agency internal procedure.

Lee Deviney, Financial Administration Director, has determined for each year of the first five years the amendments are in effect there will be the no fiscal implications for state or local government as a result of enforcing or administering the amended section. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the amended section.

Vince Devine, Support Services Manager, Lottery Operations Division, has determined that each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of the proposed amendments is to clarify the use of commission motor vehicles as well as the information to be maintained in connection with commission.

Written comments on the proposed amendments may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The amendments are proposed under Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, and under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction. The amendments are also proposed under Government Code, §2171.1045 which requires a state agency to adopt rules relating to the use and assignment of the agency's vehicles.

The amendments implement Government Code, Chapter 466.

§403.401. *Use of Commission Motor Vehicles.*

(a) (No change.)

~~[(b) A Commission employee is eligible to use a Commission motor vehicle if the employee has passed a background investigation conducted by the Commission's Security Division or the Department of Public Safety, possesses a valid Texas driver's license and has a satisfactory driving record.]~~

~~[(c) An employee operating a Commission motor vehicle must comply with all applicable federal and state traffic laws and the Commission's traffic safety policies and procedures. A violation of one of those laws, policies or procedures is grounds for disciplinary action, up to and including termination of the employee's at-will employment.]~~

~~[(d)] (b) [(d)] An employee operating a Commission motor vehicle must enter the following information in the Commission's vehicle log-book:~~

- ~~(1) beginning and ending mileage;~~
- ~~(2) beginning and ending date(s) [time];~~
- ~~(3) purpose of the use of the vehicle [destination]; and~~
- ~~(4) number [the name] of passengers [each passenger] being transported in the Commission's motor vehicle.~~

~~[(c) An employee operating a commission motor vehicle must sign the mileage log book and submit all receipts relating to fuel and maintenance costs to the commission vehicle fleet manager.]~~

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 November 25, 2003.

TRD-200308150  
Kimberly L. Kiplin  
General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5113



## TITLE 22. EXAMINING BOARDS

### PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

#### CHAPTER 329. LICENSING PROCEDURE

##### 22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes amendments to §329.5, concerning Licensing Procedures for Foreign-trained Applicants. The amendments will eliminate references to superceded procedures and to a second temporary license, and clarify that exam materials will not be sent to the Federation before the applicant arrives in the United States.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the assurance that the rules accurately describe the licensure process, and that applicants from outside the country do not begin the exam registration process before it is feasible to take the exam. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§329.5. *Licensing Procedures for Foreign-trained Applicants.*

(a) The provisions of §329.1 of this title (relating to General Licensing Procedure) apply to foreign-trained applicants.

(b) If required by §343 of the U.S. Illegal Immigration Reform and Immigrant Responsibility Act, the foreign-trained applicant must present a prescreening certificate issued by a board-approved prescreening entity. The board will establish by policy a list of board-approved prescreening entities, which will be made available to foreign-trained applicants on request.



(c) The foreign-trained applicant's educational credentials and qualifications will be evaluated by a board-approved credentialing entity in accordance with the requirements of subsection (g) [(h)] of this section. The board will establish by policy a list of approved credentialing entities, which will be made available to the foreign-trained applicant on request. In the event that the board-approved entity in an evaluation does not adhere to the guidelines of subsection (g) [(h)] of this section, the Applications Review Committee may override the evaluation. An evaluation by a board-approved education credentialing entity is valid for the purpose of licensing in this state for not more than two years after the date of issuance of the evaluation.

(d) [~~If the evaluation is accepted by the board, the applicant will be considered for a temporary license.~~] Following approval of all application materials, the foreign-trained applicant will be notified in writing that he or she has fulfilled all requirements for license by examination in Texas and is eligible for a temporary license. A temporary license may be issued under requirements set by §329.3 of this title (relating to Temporary License for Examination Candidates).

(e) After arrival in the United States, the applicant must submit a United States residential address and pay all remaining fees. [~~The residential address must be received before a temporary license may be issued.~~] Only after the applicant has arrived in the United States will the board register him or her for the national exam.

[(f) Falsification of any documents required by the board for issuance of a temporary license will result in such temporary license being null and void and prohibition against the issuance of another temporary license to the applicant.]

(f) [(g)] Designated representative letter.

(1) An applicant may designate a person as a representative by providing in writing to the board the name, telephone number, and address of the person and by stating in the letter that the person will be the designated representative for the applicant.

(2) This letter must be notarized by a notary of the country in which the applicant resides and sent directly to the board. A copy should be sent to the representative by the applicant.

(3) A designated representative may obtain confidential information regarding the application.

(4) A designated representative of an applicant will remain so until the applicant receives his permanent license or until the board is notified in writing by the applicant that the designated representative has been eliminated or replaced. An applicant may have only one designated representative at any time.

(5) The designated representative is not required by the board to have power of attorney for the applicant. A person who does have power of attorney for an applicant may not submit any document that is required by the board to be signed by the applicant and notarized. Documents submitted by a person with power of attorney for the applicant must be submitted in accordance with all requirements set by the Act and rules regarding these documents. Any falsification of documents required for licensing submitted by a designated representative or a person with power of attorney for the applicant may result in denial of license or other penalties to the applicant.

(g) [(h)] Guidelines for board-approved education credentialing entities.

(1) The credentialing entity will review all of an applicant's post-secondary professional education credentials earned outside of the United States. The entity will evaluate allowable transfer credit for the 13th year based on recommendations of the National Council on

the Evaluation of Educational Credentials or on current published reference materials. The applicant must have completed, with a passing grade of A, B, C, Pass or Credit, 60 semester hours credit or the equivalent in general education courses including courses in biological, social and physical sciences from an accredited institution of higher learning. This requirement may be met by credits earned at U.S. colleges or universities, by College Level Examination Program (CLEP) credits, or Advanced Placement (AP) according to standards of the American Council on Education. The number of credits earned by CLEP or AP may not exceed 12 semester credits.

(2) The credentialing entity must attest that the institution attended by the applicant has the recognition of the Ministry of Education or the equivalent in that country.

(3) All foreign-trained applicants must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the following exams: Test of English as a Foreign Language (TOEFL), 580 (237 if computer-based test); Test of Written English (TWE), 5.0; Test of Spoken English (TSE), 55. If an applicant makes a score of 50 on the TSE, the board will allow the applicant to submit three original, notarized letters of recommendation from individuals who have practical knowledge of the applicant's ability to communicate successfully in spoken English. Individuals who provide this written testimony must be native English speakers, cannot be related by blood or marriage to the applicant, and at least one of the letters must be from a PT licensed to practice in Texas. These letters must be submitted by their authors directly to the board. At the board's discretion, the letters may be considered satisfactory evidence of proficiency in spoken English. The Board may grant an exception to the English language proficiency exams to an applicant who submits satisfactory proof that he/she is a citizen or lawful permanent resident of the United States, and has attended 4 or more years of secondary or post-secondary education in the U.S.

(4) The credentialing entity must attest that the applicant is or was licensed or authorized to practice in the country in which the entry-level degree in physical therapy was granted. If there is no licensure or authorization in such country, the applicant must be eligible for unrestricted practice there.

(A) If the application is by examination, the license or authorization in such country must be in good standing and the licensure current.

(B) If the application is by endorsement, and the applicant has passed the exam according to Texas standards, the license or other authorization must have been in good standing at the time the license or authorization in such country expired.

(5) The credentialing entity adopts the policy of "scaling" as defined by the National Council on the Evaluation of Foreign Educational Credentials, American Association of Collegiate Registrar and Admissions Officers, Washington D.C.; i.e., a year of foreign study is worth no more than a year of American study, regardless of contact hours, or general education is converted to equate to approximately 30-32 United States semester credit hours per year, and professional education to approximately 36 semester credit hours per year.

(6) The credentialing entity must use a method to convert classroom hours to semester units which has a ratio no greater than the following: 15 contact lecture hours = one semester unit/hour; 55 contact laboratory hours = one semester unit/hour. When lecture/lab hours are not delineated on the transcript, the evaluator may use an appropriate ratio and indicate the ratio used in the evaluation.

(7) The credentialing entity must list and assign a grade for each course taken by the applicant, by assigning the grade of A, B, C,

D, F, Pass, Fail, Credit or No Credit. Those grades assigned by the credentialing entity must be the grades that are converted to the U.S. equivalent, in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. The credentialing entity must identify and list those courses which would not transfer to the U.S. as a C or above or Pass or Credit in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. An applicant must earn a grade of A, B, C, or Pass or Credit in any professional physical therapy education courses. An applicant with a grade of D, F, Fail, or no credit appearing for a professional physical therapy education course on his/her evaluation who has not successfully retaken the course with a grade of A, B, C, Pass or Credit is not eligible for licensure in Texas.

(8) The credentialing entity must attest that the applicant has successfully completed an educational program equivalent to U.S. programs accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE) and has earned the equivalent of a minimum of 72 semester hours of professional physical therapy education. The applicant must have completed courses in each of the following areas: basic sciences, clinical science, and physical therapy theory and procedures. The applicant must have also successfully completed United States required equivalent courses/hours (no less than eight and will receive credit for no more than 15 U.S. semester credit hours at the Upper Division Level) in clinical education. If the applicant has completed the required course work in clinical education but the transcript does not reflect the required credit hours then the credentialing entity may use the conversion formula of 55 contact hours per one semester credit.

(9) The credentialing entity must certify that the program awards a degree equivalent in level and purpose to the degree awarded by regionally accredited colleges and universities in the United States. If the degree is granted on or before December 31, 2002, it must be equivalent to at least a baccalaureate degree awarded by a CAPTE-accredited program. If the degree is granted on January 1, 2003 or later, the degree awarded must be equivalent to a post-baccalaureate degree awarded by a CAPTE-accredited program.

(10) If the degree awarded is equivalent to a degree in Physical Therapy as awarded by CAPTE-accredited programs in regionally accredited colleges and universities in the United States, the credentialing entity must use the approved evaluation checklist when considering an applicant's credentials. Deficiencies must be identified and must show the subjects and credit hours necessary to satisfy the requirements of the evaluation checklist. If the degree received is from a CAPTE-accredited program located outside the US, the program is considered equivalent to a domestic CAPTE-accredited Physical Therapy program, and the applicant is exempt from meeting the requirements of the evaluation checklist.

(11) The credentialing entity must submit to the board the resumes of any and all credential analysts and the physical therapy consultants involved in the evaluation of foreign-trained applicants for licensure in Texas. This must be submitted to the council at least 30 days prior to any analysis performed by that person.

(12) The credentialing entity must submit to the board a board-approved form, properly signed and notarized, in which it agrees to use the board's guidelines to evaluate transcripts of applicants seeking licensure in Texas.

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 November 17, 2003.

TRD-200307896

John P. Maline

Executive Director, Executive Council of Physical Therapy Examiners  
Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 305-6900



## PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

### CHAPTER 376. VIOLATIONS AND PENALTIES

#### 22 TAC §376.11

The Texas State Board of Podiatric Medical Examiners proposes an amendment to §376.11 concerning Monitoring Licensee Compliance. The amendment is being proposed due to an Attorney General Opinion which stated that the Board did not have the authority to conduct compliance inspections.

Allen M. Hymans, Executive Director has determined that for each year of the first five years the sections are in effect there will be no fiscal implications as a result of enforcing or administering these sections.

Mr. Hymans has also determined that for each year for the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to remove language not in compliance with current statutory authority and replace it with clear language that appropriately defines when compliance inspections may occur, thus, clarifying these issues for our licensees and the board.

Comments on or about the proposal may be submitted to Janie Alonzo, Staff Services Officer III, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, TX 78711-2216, Janie.Alonzo@foot.state.tx.us.

The amendments are being proposed 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 proposed amendment implements Texas Occupations Code, §202.204.

#### §376.11. *Office Inspections. [Monitoring Licensee Compliance.]*

The Board may conduct office inspections of a podiatric practice pursuant to a written complaint, in order to properly investigate the allegations being made by the complainant, or to allow for the proper investigation of new information developed during the investigation of the original complaint. Common allegations justifying the need for an office inspection may include, but are not limited to any violation(s) of the Board's Rules or Statute, such as improper medical record keeping, safety and hygiene issues, illegal use or dispensing of prescription drugs, failure to account for drugs dispensed or administered, drug

diversion or abuse and insurance fraud including Medicaid/Medicare billing.

[(a) The Board shall conduct a compliance monitoring program in which podiatric practices are inspected on an unannounced basis to insure that licensees are complying with the requirements of the applicable statutes and rules. Those items to be inspected include, but are not limited to, display of licenses; compliance with required consumer information; continuing education requirements; sanitation; patient record completion; drug security; drug accountability; and compliance with other state and federal laws.]

[(b) Inspection report will be completed by the Executive Director and/or office staff in duplicate. One copy will be processed and filed in the licensee's permanent file. The second copy will be left with the licensee.]

[(c) Licensees will normally be given 45 days to correct deficiencies. Licensees who are delinquent will be contacted by certified mail, requesting them to answer within 15 days of receipt of letter. If no response is received within that time period, the status of "inspection" will be changed to "investigation" and the formal investigative procedure will be followed.]

[(d) After an initial inspection, the Executive Director or Investigator may close a compliance inspection discrepancy to "voluntary compliance" within the spirit and intent of the program, with the following exception: when a violation is identified involving flagrant disregard of the law, including allowing illegal practice; use of prescription drugs; failure to account for drugs dispensed or administered; drug diversion and/or abuse; or fraud, the compliance inspection shall be terminated and an investigation will be opened. In this situation, "voluntary compliance" is not an option available for the licensee and all matters must be referred to the Executive Director or Investigator for review as a complaint.]

[(e) When a licensee is inspected some time after an initial inspection and the licensee is found to have failed to correct those deficiencies noted in the prior inspection, the Executive Director or Investigator will advise the licensee that the licensee has continued to violate the statute and/or rules and that those violations will be investigated and prosecuted.]

[(f) Licensees who are ordered by the Board to perform certain acts may be inspected on an unannounced basis to verify that the licensee has performed the required acts. Licensees who are subject to a Board Order may also be requested to appear before the Board at a Board meeting to discuss compliance with the requirements of the Board Order. If the licensee is found to have refused or failed to comply with the Board Order, the Executive Director or Investigator will advise the licensee that a report will be prepared documenting the failure to comply and that such failure to comply shall be investigated and prosecuted.]

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 November 24, 2003.

TRD-200308092

Janie Alonzo

Staff Services Officer III

Texas State Board of Podiatric Medical Examiners

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 305-7002

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CHAPTER 378. CONTINUING EDUCATION

22 TAC §378.1

The Texas State Board of Podiatric Medical Examiners proposes an amendment to §378.1, concerning Continuing Education Required. The amendment is being proposed to clarify what types of continuing medical education programs are accepted by the Board.

Allen M. Hymans, Executive Director has determined that for each year of the first five years the amendment is in effect there will be no fiscal implications as a result of enforcing or administering the amended section.

Mr. Hymans has also determined that for each year for the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended section will be the clarification of what types and formats of continuing medical education programs constitute hours of continuing medical education that are acceptable to the board.

Comments on or about the proposal may be submitted to Janie Alonzo, Staff Services Officer III, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, Janie.Alonzo@foot.state.tx.us.

The amendment is proposed 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 proposed amendment implements 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. Practice management, home study and self study programs will not be given CME credit hours.

(b) - (o) (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 November 24, 2003.

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Janie Alonzo

Staff Services Officer III

Texas State Board of Podiatric Medical Examiners

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For further information, please call: (512) 305-7002

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CHAPTER 379. FEES AND LICENSE  
RENEWAL

22 TAC §379.1

The Texas State Board of Podiatric Medical Examiners proposes an amendment to §379.1, concerning Fees. The amendment is being proposed to include the new fees for House Bill 2985, Office of Patient Protection that was established in the 78th Legislative Session.

Allen M. Hymans, Executive Director has determined that for each year of the first five years the amendment is in effect, the fiscal implications as a result of enforcing or administering the amended section will be a minimal five dollars per year increase for all new licensees and a one dollar increase to all license renewals.

Mr. Hymans has also determined that for each year for the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended rule will be the protection of patients through the newly created Office of Patient Protection.

Comments on or about the proposal may be submitted to Janie Alonzo, Staff Services Officer III, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, Janie.Alonzo@foot.state.tx.us.

The amendment is proposed 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 proposed amendment implements Texas Occupations Code, §202.153.

§379.1. Fees.

(a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatric Medical Practice Act, subsequent amendments, and the applicable rules.

(b) Fees are as follows:

(1) - (6) (No change.)

(7) Initial Licensing Fee [~~Renewal~~]-\$425 plus \$5 fee for HB 2985.

(8) Annual Renewal-\$425 plus \$1 fee for HB 2985. [~~Renewal Penalty as specified in Texas Occupations Code, §202.301(d)-~~]

(9) Renewal Penalty [~~Non certified podiatric technician registration~~]-as specified in Texas Occupations Code, §202.301(d) [\$25].

(10) Non certified podiatric technician registration [~~renewal~~]-\$25.

(11) Non certified podiatric technician renewal [~~Duplicate License~~]-\$25 [\$50].

(12) Duplicate License [~~Copies of Public Records-~~]-\$50. [~~The charges to any person requesting copies of any public record of~~

the Board will be the charge established by the General Services Commission. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.]

(13) Copies of Public Records [~~Statute and Rule Notebook~~]-The charges to any person requesting copies of any public record of the Board will be the charge established by the Texas Building and Procurement Commission. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit. [~~provided at cost to the agency-~~]

(14) Statute and Rule Notebook [~~Copy of CME printout~~]-provided at cost to the agency [\$5].

(15) Copy of CME printout [~~Duplicate Certificate~~]-\$5. [~~\$10~~].

(16) Duplicate Certificate-\$10.

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 November 24, 2003.

TRD-200308117

Janie Alonzo

Staff Services Officer III

Texas State Board of Podiatric Medical Examiners

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 305-7002

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CHAPTER 390. PROCEDURES FOR THE  
NEGOTIATION AND MEDIATION OF CERTAIN  
BREACH OF CONTRACT CLAIMS ASSERTED  
BY CONTRACTORS AGAINST THE STATE OF  
TEXAS

The Texas State Board of Podiatric Medical Examiners proposes new §§390.1, 390.3, 390.5, 390.7, 390.9, 390.21, 390.23, 390.25, 390.27, 390.29, 390.31, 390.33, 390.35, 390.37, 390.39, 390.47, 390.49, 390.51, 390.53, 390.55, 390.57, 390.59, 390.61, 390.63, 390.65, 390.71, 390.73, 390.75, concerning Procedures for the Negotiation and Mediation of Certain Breach of Contract Claims Asserted by Contractors against the State of Texas. The new rules are being proposed to be in compliance with §2260.052 of the Government Code.

Allen M. Hymans, Executive Director has determined that for each year of the first five years the sections are in effect there will be no fiscal implications as a result of enforcing or administering these sections.

Mr. Hymans has also determined that for each year for the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the ability to have clear and defined rules governing the negotiation and mediation of certain breach of contract claims asserted by contractors against the State of Texas, as required by the Texas Government Code.

Comments on or about the new rules may be submitted to Janie Alonzo, Staff Services Officer III, Texas State Board of Podiatric

Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, Janie.Alonzo@foot.state.tx.us.

## SUBCHAPTER A. GENERAL

### 22 TAC §§390.1, 390.3, 390.5, 390.7, 390.9

The new sections are proposed 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 proposed new sections implement Texas Government Code, §2260.052.

#### §390.1. Purpose.

These rules are intended to serve as guidelines for units of state government for the negotiation and mediation of a claim of breach of contract asserted by a contractor against a unit of state government under the Government Code, Chapter 2260. These rules may be adopted or modified, as appropriate, by units of state government with rulemaking authority. These rules are not binding but should be considered as recommendations to units of state government. These rules are not intended to replace agency procedures relating to breach of contract claims that are mandated by state or deferral law, but are intended to provide suggested procedures when none are so mandated. The parties to a contract are encouraged to resolve any disagreement concerning the contract in the ordinary course of contract administration under less formal procedures specified in the parties' contract.

#### §390.3. Applicability.

(a) This chapter does not apply to an action of a unit of state government for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute.

(b) This chapter does not apply to a contract action proposed of taken by a unit of state government for which a contractor receiving Medicaid funds under that contract is entitled by state statute or rule to a hearing conducted in accordance with Government Code, Chapter 2001.

(c) This chapter does not apply to contracts:

- (1) between a unit of state government and the federal government or its agencies, another state or another nation;
- (2) between two or more units of state government;
- (3) between a unit of state government and a local governmental body, or a political subdivision of another state;
- (4) between a subcontractor and a contractor;
- (5) subject to §201.112 of the Transportation Code;
- (6) within the exclusive jurisdiction of state or local regulatory bodies;
- (7) within the exclusive jurisdiction of federal courts or regulatory bodies; or
- (8) that are solely and entirely funded by federal grant monies other than for a project defined in §390.5(10) of this chapter (relating to Definitions).

#### §390.5. Definitions.

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

(1) Chief administrative officer--The commissioner, executive director, president or other executive officer responsible for the day to day operations of a unit of state government.

(2) Claim--A demand for damages by the contractor based upon the unit of state government's alleged breach of the contract.

(3) Contract--A written contract between a unit of state government and a contractor by the terms of which the contractor agrees either:

(A) to provide goods or services, by sale or lease, to or for a unit of state government; or

(B) to perform a project as defined by Government Code, §2166.001.

(4) Contractor--Independent contractor who has entered into a contract directly with a unit of state government. The term does not include:

(A) The contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a contractor;

(B) An employee of a unit of state government; or

(C) A student at an institution of higher education.

(5) Counterclaim--A demand by the unit of state government based upon the contractor's claim.

(6) Day--A calendar day. If an act is required to occur on a day falling on a Saturday, Sunday, or holiday, the first working day which is not one of these days should be counted as the required day for purpose of this act.

(7) Event--An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract:

(A) Examples of events in the context of a contract for goods or services:

(i) the failure of the unit of state government to timely pay for goods and services;

(ii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the unit of state government for work not performed under the contract or in substantial compliance with the contract terms;

(iii) the suspension, cancellation, or termination of the contract;

(iv) final rejection of the goods or services tendered by the contractor, in whole or in part;

(v) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(vi) withholding liquidated damages from final payment to the contractor.

(B) Examples of events in the context of a project:

(i) the failure to timely pay the unpaid balance of the contract price following final acceptance of the project;

(ii) the failure to make timely progress payments required by the contract;

(iii) the failure to pay the balance due and owing on the contract price; including orders for additional work, after deducting any amount owed the unit of state government for work not performed under the contract or in substantial compliance with the contract terms;

(iv) the failure to grant time extensions to which the contractor is entitled under the terms of the contract;

(v) the failure to compensate the contractor for occurrences for which the contract provides a remedy;

(vi) suspension, cancellation or termination of the contract;

(vii) rejection by the unit of state government, in whole or in part, of the "work," as defined by the contract, tendered by the contractor;

(viii) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(ix) withholding liquidated damages from final payment to the contractor;

(x) refusal, in whole or in part, of a written request made by the contractor in strict accordance with the contract to adjust the contract price, the contract time, or the scope of work.

(C) The lists in subparagraphs (A) and (B) of this paragraph should not be considered exhaustive but are merely illustrative in nature.

(8) Goods--Supplies, materials or equipment.

(9) Parties--The contractor and unit of state government that have entered into a contract in connection with which a claim of breach of contract has been filled under this chapter.

(10) Project--As defined in Government Code §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure, or appurtenant facility or utility.

(11) Services--The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of a unit of state government.

(12) Unit of state government of unit--The state or an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the Constitution or statute of this state, including a university system or institution of higher education. The term does not include a county, municipality, court of a county or municipality, special purpose district, or other political subdivision of this state.

#### §390.7. Prerequisites to Suit.

The procedures contained in this chapter are exclusive and required prerequisites to suit under the Civil Practice and Remedies Code, Chapter 107, and the Government Code, Chapter 2260.

#### §390.9. Sovereign Immunity.

This chapter does not waive a unit of state government's sovereign immunity to suit or liability.

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 December 2, 2003.

TRD-200308209

Janie Alonzo

Staff Services Officer III

Texas State Board of Podiatric Medical Examiners

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 305-7002



## SUBCHAPTER B. NEGOTIATION OF CONTRACT DISPUTES

**22 TAC §§390.21, 390.23, 390.25, 390.27, 390.29, 390.31, 390.33, 390.35, 390.37, 390.39**

The new sections are proposed 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 proposed new sections implement Texas Government Code, §2260.052.

#### §390.21. Notice of Claim of Breach of Contract.

(a) A contractor asserting a claim of breach of contract under the Government Code, Chapter 2260, shall file notice of the claim as provided by this section.

(b) The notice of claim shall:

(1) be in writing and signed by the contractor or the contractor's authorized representative;

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the officer of the unit of state government designated in the contract to receive a notice of claim of breach of contract under the Government Code, Chapter 2260; if no person is designated in the contract, the notice shall be delivered to the unit's chief administrative officer, and

(3) state in detail:

(A) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(B) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and

(C) the legal theory of recover, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed.

(c) In addition to the mandatory contents of the notice of claim as required by subsection (b) of this section, the contractor may submit supporting documentation or other tangible evidence to facilitate the unit's evaluation of the contractor's claim.

(d) The notice of claim shall be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim; provided, however, that a contractor shall deliver notice of

a claim that was pending before a unit of state government on August 30, 1999, to the unit no later than February 26, 2000.

§390.23. Agency Counterclaim.

(a) A unit of state government asserting a counterclaim under the Government Code, Chapter 2260, shall file notice of the counterclaim as provided by this section.

(b) The notice of counterclaim shall:

(1) be in writing;

(2) be delivered by hand, certified mail return receipt requested or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and

(3) state in detail:

(A) the nature of the counterclaim;

(B) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(C) the legal theory supporting the counterclaim.

(c) In addition to the mandatory contents of the notice of counterclaim required by subsection (b) of this section, the unit may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the unit's counterclaim.

(d) The notice of counterclaim shall be delivered to the contractor no later than 90 days after the unit of state government's receipt of the contractor's notice of claim.

(e) Nothing herein precludes the unit of state government from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

§390.25. Request for Voluntary Disclosure of Additional Information.

(a) Upon the filing of a claim or counterclaim, parties may request to review and copy information in the possession or custody or subject to the control of the other party that pertains to the contract claimed to have been breached, including, without limitation:

(1) accounting records;

(2) correspondence, including, without limitation, correspondence between the unit and outside consultants it utilized in preparing its bid solicitation or any part thereof or in administering the contract, and correspondence between the contractor and its subcontractors, materialmen, and vendors;

(3) schedules;

(4) the parties' internal memoranda'

(5) documents created by the contractor in preparing its offer to the unit and documents created by the unit in analyzing the offers it received in response to a solicitation.

(b) Subsection (a) of this section applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media.

(c) The contractor and the unit of state government may seek additional information directly from third parties, including, without limitation, the unit's third-party consultants and the contractor's subcontractors.

(d) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under Texas law.

(e) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

§390.27. Duty to Negotiate.

The parties shall negotiate in accordance with the timetable set forth in §390.29 of this chapter (relating to Timetable) to attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

§390.29. Timetable.

(a) Following receipt of a contractor's notice of claim, the chief administrative officer of the unit of state government or other designated representative shall review the contractor's claim(s) and the unit's counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claim(s) and counterclaim(s).

(b) Subject to subsection (c) of this section, the parties shall begin negotiations within a reasonable period of time, not to exceed 60 days following the later of:

(1) the date of termination of the contract;

(2) the completion date, or substantial completion date in the case of construction projects, in the original contract; or

(3) the date the unit of state government received the contractor's notice of claim.

(c) The unit of state government may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:

(1) delivering written notice to the contractor that the commencement of negotiations will be delayed; and

(2) delivering written notice to the contractor when the unit is ready to begin negotiations.

(d) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadlines set forth in subsection (b) or (c) of this section, whichever is applicable.

(e) Subject to subsection (f) of this section, the parties shall complete the negotiations that are required by this chapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the unit of state government received the contractor's notice of claim.

(f) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the unit of state government received the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(g) The contractor may request a contested case hearing before the State Office of Administrative Hearings ("SOAH") pursuant to §390.39 of this chapter (relating to Request for Contested Case Hearing) after the 270th day after the unit received the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

(h) The parties may agree to mediate the dispute at any time before the 270th day after the unit of state government receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to subsection (f) of this section. The mediation shall be governed by Subchapter C of this chapter.

(i) Nothing in this section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

§390.31. Conduct of Negotiation.

(a) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. A negotiation under this subchapter may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties, including, without limitation, negotiation in person, by telephone, by correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

(b) The parties may conduct negotiations with the assistance of one or more neutral third parties. If the parties choose to mediate their dispute, the mediation shall be conducted in accordance with Subchapter C of this chapter. Parties may choose an assisted negotiation process other than mediation, including without limitation, processes such as those described in Subchapter D of this chapter.

(c) To facilitate the meaningful evaluation and negotiation of the claim(s) and any counterclaim(s), the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

(d) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

§390.33. Settlement Approval Procedures.

The parties' settlement approval procedures shall be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties shall select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§390.35. Settlement Agreement.

(a) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

(b) To be enforceable, a settlement agreement must be in writing and signed by representatives of the contractor and the unit of state government who have authority to bind each respective party.

(c) A partial settlement does not waive a parties' rights under the Government Code, Chapter 2260, as to the parts of the claims or counterclaims that are not resolved.

§390.37. Costs of Negotiation.

Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees and expert's fees.

§390.39. Request for Contested Case Hearing.

(a) If a claim for breach on contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this chapter on or before the 270th day after the unit received the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §390.29(f) of this chapter (relating to Timetable), the contractor may file a request with the unit of state government for a contested case hearing before SOAH.

(b) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the chief

administrative officer of the unit of state government or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to §390.29(f) of this chapter.

(c) The unit of state government shall forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed thirty days, after receipt of the request.

(d) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the unit of state government if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

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 December 2, 2003.

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Janie Alonzo

Staff Services Officer III

Texas State Board of Podiatric Medical Examiners

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For further information, please call: (512) 305-7002



**SUBCHAPTER C. MEDIATION OF CONTRACT DISPUTES**

**22 TAC §§390.47, 390.49, 390.51, 390.53, 390.55, 390.57, 390.59, 390.61, 390.63, 390.65**

The new sections are proposed 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 proposed new sections implement Texas Government Code, §2260.052.

§390.47. Mediation Timetable.

(a) The contractor and unit of state government may agree to mediate the dispute at any time before the 270th day after the unit of state government received a notice of claim of breach of contract, or before the expiration of any extension agreed to by the parties in writing.

(b) A contractor and unit of state government may mediate the dispute even after the case has been referred to SOAH for a contested case. SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

§390.49. Conduct of Mediation.

(a) Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.



(b) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023.

(c) To facilitate a meaningful opportunity for settlement, the parties shall, to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

§390.51. Agreement to Mediate.

(a) Parties may agree to use mediation as an option to resolve a breach of contract claim at the time they enter in to the contract and include a contractual provision to do so. The parties may mediate a breach of contract claim even absent a contractual provision to do so if both parties agree.

(b) Any agreement to mediate should include consideration of the following factors:

(1) The source of the mediator. Potential sources of mediators include governmental officers or employees who are qualified as mediators under §154.052, Civil Practice and Remedies Code, private mediators, SOAH, the Center for Public Policy Dispute Resolution at The University of Texas School of Law, an alternative dispute resolution system created under Chapter 152, Civil Practice and Remedies Code, or another state or federal agency or through a pooling agreement with several state agencies. Before naming a mediator source in a contract, the parties should contact the mediator source to be sure that it is willing to serve in that capacity. In selecting a mediator, the parties should use the qualification set forth in §390.53 of this chapter (relating to Qualifications and Immunity of the Mediator).

(2) The time period for the mediation. The parties should allow enough time in which to make arrangements with the mediator and attending parties to schedule the mediation, to attend and participate in the mediation, and to complete any settlement approval procedures necessary to achieve final settlement. While this time frame can vary according to the needs and schedules of the mediator and parties, it is important that the parties allow adequate time for the process.

(3) The location of the mediation.

(4) Allocation of costs of the mediator.

(5) The identification of representatives who will attend the mediation on behalf of the parties, if possible, by name or position within the governmental unit or contracting entity.

(6) The settlement approval process in the event the parties reach agreement at the mediation.

§390.53. Qualifications and Immunity of the Mediator.

(a) The mediator shall possess the qualifications required under Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053 and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable.

(b) The parties should decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator.

(c) The parties should obtain from the prospective mediator the ethical standards that will govern the mediation.

§390.55. Confidentiality of Mediation and Final Settlement Agreement.

(a) A mediation conducted under this section is confidential in accordance with Government Code, §2009.054.

(b) The confidentiality of a final settlement agreement to which a unit of state government is a signatory that is reached as a result of the mediation is governed by Government Code, Chapter 552.

§390.57. Costs of Mediation.

Unless the contractor and unit of state government agree otherwise, each party shall be responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such party, attorney's fees, and consultant or expert fees. The costs of the mediation process itself shall be divided equally between the parties.

§390.59. Settlement Approval Procedures.

The parties' settlement approval procedures shall be disclosed by the parties prior to the mediation. To the extent possible, the parties shall select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§390.61. Initial Settlement Agreement.

Any settlement agreement reached during the mediation shall be signed by the representatives of the contractor and the unit of state government, and shall describe any procedures required to be followed by the parties in connection with final approval of the agreement.

§390.63. Final Settlement Agreement.

(a) A final settlement agreement reached during, or as a result of mediation, that resolves an entire claim or any designated and severable portion of a claim shall be in writing and signed by representatives of the contractor and the unit of state government who have authority to bind each respective party.

(b) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement shall identify the issues that are not resolved.

(c) A partial settlement does not waive a contractor's rights under the Government Code, Chapter 2260, as to the parts of the claim that are not resolved.

§390.65. Referral to the State Office of Administrative Hearings.

If mediation does not resolve all issues raised by the claim, the contractor may request that the claim be referred to SOAH by the unit of state government. Nothing in these rules prohibits the contractor and unit of state government from mediating their dispute after the case has been referred for contested case hearing, subject to the rules of SOAH.

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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Janie Alonzo

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**SUBCHAPTER D. ASSISTED NEGOTIATION PROCESSES**

**22 TAC §§390.71, 390.73, 390.75**

The new sections are proposed 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 proposed new sections implement Texas Government Code, §2260.052.

§390.71. Assisted Negotiation Processes.

Parties to a contract dispute under Government Code, Chapter 2260 may agree, either contractually or when a dispute arises, to use assisted negotiation (alternative dispute resolution) processes in addition to negotiation and mediation to resolve their dispute.

§390.73. Factors Supporting the Use of Assisted Negotiation Processes.

The following factors may help parties decide whether one or more assisted negotiation processes could help resolve their dispute:

- (1) The parties recognize the benefits of an agreed resolution of the dispute;
- (2) The expense of proceeding to contested case hearing at SOAH is substantial and might outweigh any potential recovery;
- (3) The parties want an expedited resolution;
- (4) The ultimate outcome is uncertain;
- (5) There exists factual or technical complexity or uncertainty which would benefit from expertise of a third-party expert for technical assistance or fact-finding;
- (6) The parties are having substantial difficulty communicating effectively;
- (7) A mediator third party could facilitate the parties' realistic evaluation of their respective cases;
- (8) There is an on-going relationship that exists between parties;
- (9) The parties want to retain control over the outcome;
- (10) There is a need to develop creative alternatives to resolve the dispute;
- (11) There is a need for flexibility in shaping relief;
- (12) The other side has an unrealistic view of the merits of their case;
- (13) The parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

§390.75. Use of Assisted Negotiation Processes.

Any of the following methods, or a combination of these methods, or any assisted negotiation process agreed to by the parties, may be used in seeking resolution of disputes or other controversy arising under Government Code, Chapter 2260. If the parties agree to use an assisted negotiation procedure, they should agree in writing to a detailed description of the process prior to engaging in the process.

- (1) Mediation. (See Subchapter C in this chapter.)
- (2) Early evaluation by a third-party neutral.

(A) This is a confidential conference where the parties and their counsel present the factual and legal bases of their claim and

receive a non-binding assessment by an experienced neutral with subject-matter expertise or with significant experience in the substantive area of law involved in the dispute.

(B) After summary presentation, the third-party neutral identifies areas of agreement for possible stipulation, assesses the strengths and weaknesses of each party's position, and estimates, if possible, the likelihood of liability and the dollar range of damages that appear reasonable to him or her.

(C) This is a less complicated procedure than the mini-trial, described in paragraph (4) of this section. It may be appropriate for only some issues in dispute, for example, where there are clear-cut differences over the appropriate amount of damages. This process may be particularly helpful when:

- (i) The parties agree that the dispute can be settled;
- (ii) The dispute involves specific legal issues;
- (iii) The parties disagree on the amount of damages;
- (iv) The opposition has an unrealistic view of the dispute;
- (v) The neutral is a recognized expert in the subject area or area of law involved.

(3) Neutral fact-finding by an expert.

(A) In this process, a neutral third-party expert studies a particular issue and reports findings on that issue. The process usually occurs after most discovery in the dispute has been completed and the significance of particular technical or scientific issues is apparent.

(B) The parties may agree in writing that the fact-finding will be binding on them in later proceedings (and entered into as a stipulation in the dispute if the matter proceeds to contested case hearing), or that it will be advisory in nature, to be used only in further settlement discussions between representatives of the parties. This process may be particularly helpful when:

- (i) Factual issues requiring expert testimony may be dispositive of liability or damage issues;
- (ii) The use of a neutral is cost effective;
- (iii) The neutral's findings could narrow factual issues for contested case hearing.

(4) Mini-trial.

(A) A mini-trial is generally a summary proceeding before a representative of upper management from each party, with authority to settle, and a third-party neutral selected by agreement of the parties. A mini-trial is usually divided into three phases; a limited information exchange phase, the actual hearing, and post-hearing settlement discussions. No written or oral statement made in the proceeding may be used as evidence or an admission in any other proceeding.

(B) The information exchange stage should be brief but it must be sufficient for each party to understand and appreciate the key issues involved in the case. At a minimum, parties should exchange key exhibits, introductory statements, and a summary of witness's testimony.

(C) At the hearing, representatives of the parties present a summary of the anticipated evidence and any legal issues that must be decided before the case can be resolved. The third-party neutral presides over the presentation and may question witnesses and counsel, as well as comment on the arguments and evidence. Each party may agree to put on abbreviated direct and cross-examination testimony. The hearing generally takes no longer than 1 - 2 days.

(D) Settlement discussions, facilitated by the third-party neutral, take place after the hearing. The parties may ask the neutral to formally evaluate the evidence and arguments and give an advisory opinion as to the issues in the case. If the parties cannot reach an agreed resolution to the dispute, either side may declare the mini-trial terminated and proceed to resolve the dispute by other means.

(E) Mini-trials may be appropriate when:

(i) The dispute is at a stage where substantial costs can be saved by a resolution based on limited information gathering;

(ii) The matter justifies the senior executive time required to complete the process;

(iii) The issues involved include highly technical mixed questions of law and fact;

(iv) The matter involves trade secrets or other confidential or proprietary information; or

(v) The parties seek to narrow the large number of issues in dispute.

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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Janie Alonzo

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Texas State Board of Podiatric Medical Examiners

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## **TITLE 25. HEALTH SERVICES**

### **PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**

#### **CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES**

##### **SUBCHAPTER D. ADMINISTRATIVE HEARINGS OF THE DEPARTMENT IN CONTESTED CASES**

###### **25 TAC §411.160**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes amendments to §411.160 of Chapter 411, Subchapter D, concerning administrative hearings of the department in contested cases.

The amendments eliminate references to an administrative hearing decision being appealable. TDMHMR has determined that an administrative hearing decision is appealable through judicial review only if statutorily authorized.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed amended rule is in effect,

enforcing or administering the amended rule does not have foreseeable fiscal implications relating to cost or revenue of the state or local governments.

Cathy Campbell, director, legal services, has determined that, for each year of the first five years the proposed amended rule is in effect, the public benefit expected is the promulgation of rules that are consistent with the Administrative Procedure Act, Texas Government Code, Chapter 2001. It is anticipated that there would be no economic cost to persons required to comply with the proposed amended rule.

It is anticipated that the proposed amended rule will not affect a local economy.

It is anticipated that the proposed amended rule will not have an adverse economic effect on small businesses or microbusinesses because the amendments does not place requirements on small or microbusinesses.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The rule is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and the Texas Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The proposal would affect the Texas Government Code, §2001.004.

###### *§411.160. Decisions.*

(a) The administrative hearing decision of the ALJ shall be based solely upon the record of the contested case. The decision shall be in writing and include the findings of fact and conclusions of law separately stated.

(b) Issues must be proven by a preponderance of the evidence.

(c) Findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(d) Findings of fact must be based exclusively on the evidence and on matters officially noticed. If a party submits a proposed finding of fact, the decision must include a ruling on each proposed finding.

(e) The ALJ shall enter into the record orders that are necessary to implement the administrative hearing decision. The ALJ may also make other recommendations as the ALJ considers appropriate.

(f) The following provisions determine when an administrative hearing decision in a contested case is final.

(1) If a motion for a rehearing is not filed in the time frame as described in subsection (h) of this section, the administrative hearing decision is final on the expiration of the period for filing a motion for a rehearing.

(2) If a motion for a rehearing is filed in the time frame described in subsection (h) of this section, the administrative hearing decision is final [and appealable through a judicial review] on the date:

(A) the order overruling the motion for a rehearing is made; or

(B) the motion is overruled by operation of law.

(3) If the ALJ finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision, the

administrative hearing decision is final on the date the decision is made. In this event, the ALJ must recite or record into the record the finding of such imminent peril as well as the fact that the decision is final and effective on the date recited or recorded into the record. [~~The final decision is appealable on the date recited or recorded into the record and no motion for rehearing is required as prerequisite for an appeal.~~]

(4) A decision in a contested case is final on the date specified in the order for a case in which all parties agree to the specified date in writing or on the record, if the specified date is not before the date the order is signed or later than the 20th day after the order was made.

(g) The ALJ shall send the administrative hearing decision by first class certified mail, return receipt requested, to the attorneys/representatives, or, if a party is not represented by an attorney/representative, to that party. The ALJ shall keep an appropriate record of that mailing. A party or attorney/representative notified by mail of an administrative hearing decision is presumed to have been notified on the date such notice is mailed.

(h) Any party may file a written motion for rehearing. The motion must be addressed to the ALJ and must be filed so that it is received by the ALJ within 20 days after the date the administrative hearing decision was mailed to the party or the party's attorney/representative. Replies to a motion for rehearing from other parties involved must be filed so as to be received by the ALJ within 30 days after the date of mailing of the administrative hearing decision. The ALJ shall either grant or deny the motion for rehearing within 45 days after the date the administrative hearing decision was mailed. If the ALJ does not rule on the motion for rehearing, the motion is overruled by operation of law 45 days after the date the administrative hearing decision was mailed.

(i) The period of time for the filing of motions for rehearing and replies may be extended by written order of the ALJ but such extension may not extend the period for action beyond 90 days after the date the administrative hearing decision was mailed. In the event of extension, if the ALJ does not rule on a motion for a rehearing, the motion for rehearing is overruled by operation of law on the date prescribed in the extension order, or in the absence of a prescribed date, 90 days after the date the administrative hearing decision was mailed.

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 December 1, 2003.

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Rodolfo Arredondo  
Chairman, Texas MHMR Board  
Texas Department of Mental Health and Mental Retardation  
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For further information, please call: (512) 206-4516



## 25 TAC §411.161

*(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 Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §411.161 of Chapter 411, Subchapter D, concerning administrative hearings of the department in contested cases.

The rule is proposed for repeal because TDMHMR has determined that an administrative hearing decision is appealable through judicial review only if statutorily authorized.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repealed rule does not have foreseeable fiscal implications relating to cost or revenue of the state or local governments.

Cathy Campbell, director, legal services, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit expected is the promulgation of rules that are consistent with the Administrative Procedure Act, Texas Government Code, Chapter 2001. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeal.

It is anticipated that the proposed repeal will not affect a local economy.

It is anticipated that the proposed repeal will not have an adverse economic effect on small businesses or microbusinesses because the proposed repeal does not place requirements on small or microbusinesses.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The rule is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and the Texas Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The proposal would affect the Texas Government Code, §2001.004.

### §411.161. Judicial Review.

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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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

## CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

### SUBCHAPTER U. USE OF CREDIT INFORMATION OR CREDIT SCORES

#### 28 TAC §5.9941

The Texas Department of Insurance proposes amendments to Subchapter U, §5.9941, pursuant to Insurance Code Article 21.49-2U, regarding the allowable differences in rates charged by insurers due solely to differences in credit scores. In general, Article 21.49-2U provides certain requirements pertaining to the use of credit information and credit scoring by insurers in Texas for underwriting or rating certain personal insurance policies. Article 21.49-2U applies to insurers authorized to write property and casualty insurance in this state that write certain types of personal insurance coverage and use credit information or credit reports for the underwriting or rating of that coverage. However, Article 21.49-2U does not apply to farm mutual insurance companies.

Article 21.49-2U, Section 13(b) requires the commissioner to adopt rules regarding the allowable differences in rates charged by insurers due solely to differences in credit scores. The proposed amendments to §5.9941 establish an allowable percentage difference in rates an insurer may charge due solely to credit scoring if the difference in rates is based on sound actuarial principles and fully supported by data filed with the department. Section 5.9941 was adopted on November 10, 2003 and became effective on November 30, 2003. Prior to the adoption of §5.9941, the Texas Department of Insurance received numerous comments from members of the legislature, the public and insurers on proposed §5.9941. Many comments were received concerning the appropriate allowable differences in rates charged by insurers due solely to differences in credit scores. Some commenters suggested that the allowable difference be a dollar amount; most other commenters requested that a percentage amount be set by the Commissioner. After thorough consideration of the statute, comments received and legislative history, the Texas Department of Insurance is proposing an amendment to establish a rate difference due solely to the use of credit scoring that cannot be greater than +/- 10% from what would have been charged had credit scoring not been used. The amendment further provides that if an insurer uses or proposes to use credit scoring to rate personal insurance policies and that the rate difference due solely to credit scoring is greater than +/-10%, the insurer must request and justify a variance to support its proposed rating structure. Amendments to §5.9941 are necessary to ensure that insurance consumers are charged premiums that are reasonable, fair, and related to their risk profile while minimizing market disruption. The proposed amendments will further promote stability in the market and promote an increase in consumer choices while promoting a competitive environment. Based on public, legislative and industry comments, the department believes that it is good public policy to set some type of limitation on the allowable differences in rates. The department further believes that to avoid market disruption and to provide stability, insurers must request and justify a variance to use a rating structure that exceeds the +/-10% limitation. This would mitigate rate increases where no rate increases would have occurred absent the adoption of §5.9941. The department will continue to require that the allowable differences be based on sound actuarial principles, fully supported by data filed with the department.

The department will consider the adoption of amendments to §5.9941 in a public hearing under Docket Number 2583, scheduled for 9:30 a.m. on January 7, 2004, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Marilyn Hamilton, associate commissioner, Property and Casualty Group, 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 or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Hamilton has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of the proposed section will be that consumers will not be charged rates, due solely to the use of credit scoring, that vary more than +/-10% that are not fully supported by actuarial information that is reasonably related to actual or anticipated loss experience. Requiring insurers to request and justify a variance to use rates charged due solely to use of credit scoring that exceed +/-10% from what they would have been in the absence of credit scoring minimizes the possibility that consumers will realize rate increases and prevents market disruption. The costs of compliance with the proposed section for large, small and micro-businesses result entirely from the legislative enactment of Senate Bill 14, 78th Legislature, and not as a result of the administration or enforcement of the rules. The proposed section may not be waived for insurers that qualify as small or micro-businesses because the requirements of the section are prescribed by statute, and the statute does not provide for an exemption.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 12, 2004, 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 Marilyn Hamilton, Associate Commissioner, Property & Casualty Group, MC 104-PC, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under Insurance Code Article 21.49-2U and §36.001. The 78th Legislature enacted Senate Bill 14, which added Article 21.49-2U. Article 21.49-2U, Section 13(a) authorizes the commissioner to adopt rules as necessary to implement the article. Article 21.49-2U, Section 13(b) requires the commissioner to adopt rules regarding the allowable differences in rates charged by insurers due solely to differences in credit scores. 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 statute is affected by this proposal: Insurance Code Article 21.49-2U

*§5.9941. Differences in Rates Charged Due Solely to Difference in Credit Scores.*

(a) An insurer may vary its rates charged to applicants or insureds for personal insurance policies due solely to credit scoring. The differences in rates charged due solely to credit scoring shall be based on sound actuarial principles and supported by data submitted to [filed with] the department and must meet the following requirements:

(1) The rate differences due solely to the use of credit scoring cannot be greater than +/- 10% from what would have been charged had credit scoring not been used.

(2) Notwithstanding paragraph (1) of this subsection, if an insurer uses or proposes to use a credit scoring rating structure for rating personal insurance policies in Texas that has a rate differential greater than +/-10%, the insurer must request and justify a variance for the credit scoring rating structure. The purpose of requiring a request and justification for a variance is to minimize rate increases that would have otherwise occurred as a result of the application of paragraph (1) of this subsection.

(3) The request for a variance in paragraph (2) of this subsection shall include actuarial support and any other information required by the Commissioner, including the numbers of policyholders and associated premiums that would be affected by any rate differences.

(b) Requests for variances [Filings] under this section must be submitted to the Texas Department of Insurance no later than March 1, 2004 to the Property & Casualty Intake Unit, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104 or to the Texas Department of Insurance, Property & Casualty Intake Unit, 333 Guadalupe, Austin, Texas 78701.

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 December 1, 2003.

TRD-200308185

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 463-6327



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 59. PARKS

#### SUBCHAPTER F. STATE PARK

#### OPERATIONAL RULES

##### 31 TAC §59.134

The Texas Parks and Wildlife Department proposes an amendment to §59.134, concerning Rules of Conduct in Parks. The amendment would prohibit the feeding of wildlife and exotic wildlife on state parks except as specifically authorized by the department. The rule is necessary for several reasons. First, wild animals are inherently dangerous, no matter how innocuous they may seem. Wild animals that become habituated to humans, and especially those wild animals that learn to associate humans with food, lose their natural fear and in some cases can behave aggressively. In addition to their potential to inflict physical harm, wild animals also have the potential to carry and transmit disease. Therefore, the rule is primarily intended to reduce threats to human health and safety. Secondly, wild animals should live in natural systems. Supplemental feeding, however well intended it may be, is an unnatural interference in the natural balance between animals and their habitat and can,

if unchecked, lead to population problems and habitat degradation. Additionally, people have been known to offer a variety of foodstuffs to wild animals, some of which may be unhealthy or injurious; the proposed rule is therefore also intended to protect the well-being of wildlife resources on state parks. The proposed rule also corrects a misspelling in subsection (e)(3), replaces references to horses with references to equines, which is necessary because park rules relating to equines apply to all equines, not just horses, and would redesignate subsection (v)(2)(A) and (B) as (v)(3) and (4) for purposes of clarity.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the increased protection of the health and safety of park visitors and wildlife.

The rule will have no economic effects on small businesses, microbusinesses, or persons required to comply with the rule.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

The department has determined that the proposed rule is not a major environmental rule as defined by Government Code, §2001.0225.

Comments on the proposed rule may be submitted to Wes Masur, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas, 78744; (512) 389-8001 (e-mail: wes.masur@tpwd.state.tx.us).

The amendment and new sections are proposed under Parks and Wildlife Code, §13.101, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts.

The amendment and new sections affect Parks and Wildlife Code, Chapter 13.

§59.134. *Rules of Conduct in Parks.*

(a) - (d) (No change.)

(e) Animals. It is an offense to:

(1) bring into or possess within a state park a pet or other domesticated animal, unless the animal is secured by a leash not exceeding six feet in length, or confined in a vehicle, or to permit an animal to enter into or remain in a unit of the state park unless so secured;

(2) permit a pet or other animal to remain unattended or create a disturbance or hazard within a state park;

(3) permit an animal (except a trained assistance animal accompanying a person with a disability) to enter into or remain in any building or enclosure designated for public use including, but not

limited to, a restaurant, snack bar, cabin, lodge room, restroom [~~re-store~~], park store, shelter, refectory building, amphitheater, administration building, or railroad coach;

(4) permit a pet animal in the water of a designated swimming area or to permit a pet animal (except a trained assistance animal accompanying a person with a disability) within the land or beach area adjacent to the water of a designated swimming area;

(5) bring into, permit to range, or release into a state park a wild animal, pet, fowl, or livestock, except as authorized in this chapter or a permit or by law;

(6) possess a noisy, vicious, or dangerous animal, or one which is disturbing to other persons, in a state park;

(7) ride, drive, lead, or keep equines [~~a saddle horse~~], except in designated areas;

(8) ride equines [~~a saddle horse~~] in a manner that is dangerous to a person or animal;

(9) allow equines [~~a saddle horse~~] to stand unattended or insecurely tied; and

(10) hitch equines [~~a saddle horse~~] to a tree, shrub, or structure in any manner that may cause damage.

(f) - (u) (No change.)

(v) Peace and quiet. It is an offense to:

(1) disturb other persons in sleeping quarters or in campgrounds between the hours of 10 p.m. and 6 a.m.; [~~and~~]

(2) cause, create, or contribute to any noise which is broadcast, or caused to be broadcast, into sleeping quarters or campgrounds, or which emits sound beyond the person's immediate campsite, between the hours of 10 p.m. and 6 a.m., whether by shouting or singing, by using a radio, phonograph, television, or musical instrument, or by operating mechanical or electronic equipment;[~~]~~

(3) [~~(A)~~] use electronic equipment, including electrical speakers, at a volume which emits sound beyond the immediate individual camp or picnic site at any time without specific permission of the director; or

(4) [~~(B)~~] create a disturbance by causing excessive noise by any means.

(w) - (aa) (No change.)

(bb) Wildlife. It is an offense to:

(1) harm, harass, disturb, trap, confine, catch, possess, or remove any wildlife, or portions of wildlife from a unit of the state park system, except by a permit issued by the director or as provided by the Parks and Wildlife Code, Chapter 62, Subchapter D; [~~and~~]

(2) release any fish into the waters of any state park, except as authorized by the Parks and Wildlife Code; or

(3) feed or offer food to any wildlife or exotic wildlife, or to leave food unsecured in a manner that makes the food available to wildlife or exotic wildlife, unless specifically authorized by the department. The feeding of birds may be permitted on a park-by-park basis as prescribed by the department.

(cc) - (ee) (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 December 1, 2003.

TRD-200308187

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 389-4775



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 6. INVESTMENT MANAGEMENT SUBCHAPTER A. STANDARDS OF CONDUCT FOR FINANCIAL ADVISORS

##### 34 TAC §§6.1 - 6.5

The Comptroller of Public Accounts proposes new §§6.1, 6.2, 6.3, 6.4, and 6.5 concerning the standards of conduct and disclosure requirements applicable to financial advisors or service providers who provide financial services to the comptroller (as defined below) or advise the comptroller in connection with the management or investment of state funds. These new sections are proposed under Texas Administrative Code, Title 34, Part 1, new Chapter 6, Investment Management, new Subchapter A, Standards of Conduct for Financial Advisors. These new sections are proposed pursuant to Senate Bill 1059, 78th Legislature, Regular Session, 2003.

Senate Bill 1059, 78th Legislature, Regular Session, adopts Government Code, new Chapter 2263, regarding ethics and disclosure requirements for outside financial advisors and service providers. New Government Code, §2263.004, requires the governing body of a state governmental entity by rule to adopt standards of conduct applicable to financial advisors or service providers who provide financial services to the state governmental body or advise the state governmental body in connection with the management or investment of state funds. These provisions of Senate Bill 1059 were effective September 1, 2003.

Proposed new §6.1 outlines the definitions of comptroller and financial advisor applicable to this subchapter. Proposed new §6.2 addresses the applicability of the subchapter to financial advisors or service providers who render important investment or funds management advice to the comptroller with respect to state funds. Proposed new §6.3 outlines disclosure requirements for financial advisors or service providers, including a requirement to file an annual statement with the comptroller and the state auditor. Proposed new §6.4 outlines standards of conduct for financial advisors or service providers, which are in addition to any standards required by any contracts or service agreements. Proposed new §6.5 provides that a contract is voidable by the comptroller if a financial advisor or service provider violates a standard of conduct outlined in this subchapter.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rule will be to provide additional information to affected entities regarding new legislative requirements with respect to standards of conduct and required disclosures applicable to financial advisors or service providers who provide financial services to the comptroller or advise the comptroller in connection with the management or investment of state funds. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules. There are no significant anticipated fiscal implications for small businesses.

Comments on the proposal may be submitted to Lita Gonzalez, Deputy General Counsel for Agency Affairs, Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received not later than the 30th day after the issue date of the Texas Register in which this proposal appears.

These new sections are proposed under Government Code, new §2263.004 (as enacted by Senate Bill 1059, 78th Legislature, Regular Session, 2003), which requires the governing body of a state governmental entity by rule to adopt standards of conduct applicable to financial advisors or service providers who provide financial services to the state governmental body or advise the state governmental body in connection with the management or investment of state funds.

The new sections implement Government Code, Chapter 2263.

#### §6.1. Definitions.

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

(1) Comptroller--The Office of the Comptroller of Public Accounts of the State of Texas, and any division or entity within the Office of the Comptroller or managed by the comptroller.

(2) Financial advisor or service provider--Includes a person or business entity who acts as a financial advisor, financial consultant, money manager, investment manager, or broker.

#### §6.2. Applicability.

(a) This subchapter applies in connection with the management or investment of any state funds managed or invested by the comptroller under the Texas Constitution or other law, including Government Code, Chapters 404 and 2256, without regard to whether the funds are held in the state treasury.

(b) This subchapter applies to financial advisors or service providers who are not employees of the comptroller, who provide financial services to, or advise the comptroller in connection with the management or investment of state funds, and who:

(1) may reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from the comptroller during a fiscal year; or

(2) render important investment or funds management advice to the comptroller.

(c) The standards adopted in this subchapter are intended to identify professional and ethical standards by which all financial advisors or service providers must abide in addition to the professional and ethical standards that may already be imposed on financial advisors or service providers under any contracts or service agreements with the comptroller.

#### §6.3. Disclosure Requirements.

(a) A financial advisor or service provider shall disclose in writing to the comptroller and to the state auditor:

(1) any relationship the financial advisor has with any party to a transaction with the comptroller, other than a relationship necessary to the investment or fund management services that the financial advisor performs for the comptroller, if the relationship could reasonably be expected to diminish the financial advisor's independence of judgment in the performance of the person's responsibilities to the comptroller; and

(2) all direct or indirect pecuniary interests the financial advisor has in any party to a transaction with the comptroller, if the transaction is connected with any financial advice or service the financial advisor provides to the comptroller in connection with the management or investment of state funds.

(b) The financial advisor or service provider shall disclose a relationship described by subsection (a) without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

(c) A financial advisor or service provider shall file annually a statement with the comptroller and with the state auditor. The statement must disclose each relationship and pecuniary interest described by subsection (a) or, if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.

(d) The annual statement must be filed not later than April 15 on a form prescribed by the comptroller. The statement must cover the reporting period of the previous calendar year.

(e) The financial advisor or service provider shall promptly file a new or amended statement with the comptroller and with the state auditor whenever there is new information to report under subsection (a).

#### §6.4. Standards of Conduct.

##### (a) Compliance.

(1) These standards are intended to be in addition to, and not in lieu of, a financial advisor's or service provider's obligations under its contract or service agreement with the comptroller. In the event of a conflict between a financial advisor's obligations under these standards and under its contract or services agreement, the standard that imposes a stricter ethics or disclosure requirement controls.

(2) A financial advisor or service provider shall be knowledgeable about these standards, keep current with revisions to these standards, and abide by the provisions set forth in these standards.

(3) In all professional activities a financial advisor or service provider shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities, including the comptroller, and in accordance with any established policies of the comptroller.

##### (b) Qualification Standards.

(1) A financial advisor or service provider shall render opinions or advice, or perform professional services only in those areas in which the financial advisor has competence based on education, training or experience. In areas where a financial advisor is not qualified, the financial advisor shall seek the counsel of qualified individuals and/or refer the comptroller to such persons.

(2) A financial advisor or service provider shall keep informed of developments in the field of financial planning and investments and participate in continuing education throughout the financial



advisor's relationship with the comptroller in order to improve professional competence in all areas in which the financial advisor is engaged.

(c) Integrity.

(1) A financial advisor or service provider has an obligation to observe standards of professional conduct in the course of providing advice, recommendations and other services performed for the comptroller. A financial advisor shall perform professional services with honesty, integrity, skill, and care. In the course of professional activities, a financial advisor shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental, or other regulatory body or official, or any other person or entity.

(2) A financial advisor or service provider's relationship with a third party shall not be used to obtain illegal or improper treatment from such third party on behalf of the comptroller.

(d) Objectivity. A financial advisor or service provider will maintain objectivity and be free of conflicts of interest in discharging its responsibilities. A financial advisor will remain independent in fact and appearance when providing financial planning and investment advisory services to the comptroller.

(e) Prudence. A financial advisor or service provider shall exercise reasonable and prudent professional judgment in providing professional services to the comptroller.

(f) Competence. A financial advisor or service provider shall strive to continually improve its competence and the quality of services, and discharge its responsibilities to the best of its ability.

(g) Conflicts of Interest.

(1) If a financial advisor or service provider is aware of any significant conflict between the interests of the comptroller and the interests of another person, the financial advisor shall advise the comptroller of the conflict and shall also include appropriate qualifications or disclosures in any related communication.

(2) A financial advisor or service provider shall not perform professional services involving an actual or potential conflict of interest with the comptroller unless the financial advisor's ability to act fairly is unimpaired, there has been full disclosure of the conflict to the comptroller, and the comptroller has expressly agreed in writing to the performance of the services by the financial advisor.

(h) Confidentiality.

(1) A financial advisor or service provider shall not disclose to another person any confidential information obtained from the comptroller or regarding the comptroller's investments unless authorized to do so by the comptroller in writing or required to do so by law.

(2) For the purposes of this section, "confidential information" refers to information not in the public domain of which the financial advisor or service provider becomes aware during the course of rendering professional services to the comptroller. It may include information of a proprietary nature, information that is excepted from disclosure under the Public Information Act, Government Code, Chapter 552, or information restricted from disclosure under any contract or service agreement with the comptroller.

§6.5. Contract Voidable.

A contract under which a financial advisor or service provider renders financial services or advice to the comptroller is voidable by the comptroller if the financial advisor violates a standard of conduct outlined in this subchapter.

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 December 1, 2003.

TRD-200308183

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 475-0387



## CHAPTER 9. PROPERTY TAX ADMINISTRATION

### SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

#### 34 TAC §9.417

The Comptroller of Public Accounts proposes amendments to §9.417, concerning property tax exemption for organizations engaged primarily in charitable activities. The amendment is proposed to amend the model exemption application form to implement House Bill 500, 78th Legislature, effective September 1, 2003, which requires the chief appraiser to keep confidential the driver's license number, personal identification number, or social security number provided on the exemption application except for disclosure to appraisal office employees who appraise property and as authorized by Tax Code §11.48(b), and to implement House Bill 2416, 78th Legislature, effective September 1, 2003, which provides exemption for an incomplete improvement for five years.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information to taxpayers regarding state and local tax laws. The proposed amendment would have no significant fiscal impact on small businesses.

Comments on the proposal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This section is proposed under Tax Code, §5.03, which requires the comptroller to adopt rules establishing the minimum standards for the administration and operation of an appraisal district, Tax Code, §5.07, which requires the comptroller to prescribe the contents and form for the administration of the property tax system, and Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each kind of property tax exemption.

The section implements Tax Code, Chapter 11, Subchapter B, §11.184.

§9.417. *Property Tax Exemption for Organizations Engaged Primarily in Charitable Activities.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Local charitable organization--An organization that is a chapter, subsidiary, or branch of a statewide charitable organization and that is engaged primarily in performing functions that are listed in Tax Code, §11.18(d).

(2) Statewide charitable organization--An organization that is statewide and that is engaged primarily in performing functions that are listed in Tax Code, §11.18(d).

(b) A taxing unit may adopt a tax exemption for property that a statewide or local charitable organization owns if the property is used exclusively by the charitable organization or by other organizations that are eligible for tax exemption under Tax Code, §11.18 or §11.184, except as provided in subsection (c) of this section. The exemption may be adopted either by the governing body of the taxing unit or by the voters at an election that is called by the governing body of a taxing unit.

(c) Use of exempt property by persons who are not charitable organizations eligible for exemption does not result in the loss of an exemption authorized by this section if the use is incidental to use by those charitable organizations and limited to activities that benefit the charitable organization that owns or uses the property.

(d) An organization that seeks a tax exemption under this section must obtain from the comptroller and submit with its application a determination letter that verifies that the organization is exempt from sales tax and, if applicable, franchise tax, as a charitable organization. For information or procedures on obtaining a determination letter from the comptroller, see §3.322 of this title (relating to Exempt Organizations) and other publications that the comptroller issues.

(e) A determination by the comptroller that a statewide charitable organization is exempt from sales tax and, if applicable, franchise tax, will also constitute a determination of exempt status for any local charitable organizations that have been identified in the statewide charitable organization's application for determination. The comptroller will send a determination letter to that statewide organization and to any subchapters that are included in the statewide organization's application.

(f) An organization must submit a copy of the comptroller's determination letter to the chief appraiser at the same time that the organization submits its application for property tax exemption. The chief appraiser shall determine if the charitable organization is using its property exclusively for charitable activities.

(g) An organization must comply with the filing requirements for application for property tax exemption that are stated in Tax Code, §11.43(d). A request to the comptroller for a determination letter for purposes of compliance with subsection (d) of this section does not automatically extend the filing due date of April 30.

(1) If an organization has not received a determination letter from the comptroller, the organization may use the following procedure to request that the chief appraiser extend the filing due date for an application for exemption.

(A) The organization must submit to the chief appraiser a written request for an extension by no later than April 1;

(B) The request for extension should state that the organization has submitted a request for a determination letter to the comptroller and should have as an attachment a copy of the request for determination letter that the organization submitted to the comptroller;

(C) The chief appraiser shall grant the organization's request for extension for a period of not longer than 60 days if the organization has complied with subparagraphs (A) and (B) of this paragraph;

(D) The chief appraiser may verify with the comptroller that a request for a determination letter has been submitted.

(2) Notwithstanding paragraph (1) of this subsection, the chief appraiser may extend the deadline for filing an application for exemption at any time under the authority provided by Tax Code, §11.43.

(h) If the chief appraiser, upon receipt of the application for tax exemption, disagrees with the comptroller's determination, then the chief appraiser may request a review of the determination by submitting a written request to the comptroller.

(1) The written request for reconsideration must be directed to the manager of the Property Tax Division, must contain specific grounds on which the chief appraiser disagrees with the comptroller's determination, and must be accompanied by specific evidence that supports each ground that the chief appraiser asserts.

(2) The comptroller will respond to the written request for reconsideration within 30 calendar days from the date on which the request for reconsideration was received.

(3) The comptroller's decision to uphold the determination is conclusive evidence that an organization is engaged primarily in performing charitable function. The decision is not subject to further appeal.

(i) An exemption under this section expires at the end of the fifth tax year after the year in which the exemption is granted. The organization may obtain a new determination letter and reapply for the exemption.

(j) An application for exemption must be substantially in the form of the Application for Primarily Charitable Organization Property Tax Exemption (Form 50-299). The comptroller adopts this form by reference. Copies of the form are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling our toll-free number, 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

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 November 25, 2003.

TRD-200308125

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 475-0387

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**TITLE 43. TRANSPORTATION**

**PART 1. TEXAS DEPARTMENT OF  
TRANSPORTATION**

CHAPTER 15. TRANSPORTATION PLANNING  
AND PROGRAMMING  
SUBCHAPTER M. RAIL FACILITIES

43 TAC §§15.150 - 15.153

The Texas Department of Transportation (department) proposes new §§15.150-15.153, concerning the acquisition of abandoned rail facilities.

EXPLANATION OF PROPOSED NEW SECTIONS

Transportation Code, Chapter 91, authorizes the department to acquire, finance, construct, maintain, and operate a passenger or freight rail facility or system, including the acquisition of abandoned rail facilities. House Bill 2, 78th Legislature, Third Called Session, 2003, directs the Texas Transportation Commission (commission) to adopt rules governing the disbursement of funds for the acquisition of abandoned rail facilities. In establishing criteria for the department's acquisition of abandoned rail facilities, the commission is required to consider the local and regional economic benefit realized from the disbursement of funds in comparison to the amount of funds disbursed.

New §15.150 describes the purpose of the new subchapter, which is to prescribe policies and procedures for the department's acquisition of abandoned rail facilities.

New §15.151 defines words and terms used in the new subchapter. This section defines an abandoned rail facility as a rail facility for which a notice of intent to abandon or discontinue service (notice) has been filed with the Surface Transportation Board (board), an application for abandonment or discontinuance of service (application) has been filed with the board, or for which abandonment or discontinuance of service has been authorized by the board.

New §15.152(a) prescribes procedures for obtaining public involvement in the department's decision regarding whether to acquire an abandoned rail facility. Under state law, the department is required, upon receipt of a notice of intent to abandon or discontinue service filed with the board under 49 C.F.R. §1152.20, to coordinate with any municipality, county, or rural rail transportation district in which all or a segment of the rail facility is located to determine whether the department should acquire the rail facility, or any other action should be taken to provide for continued rail service.

Section 15.152(b) provides that the department will request that a municipality, county, or rural rail transportation district in which all or a segment of the rail facility is located provide documentation concerning the local and regional economic impact of an abandonment or discontinuance of service. This information is necessary in order for the department and the commission to comply with the requirement in House Bill 2 to consider the local and regional economic benefit realized from the disbursement of funds in comparison to the amount of funds disbursed.

Section 15.152(c) and (e) provides that if the department determines that there is a need to preserve the rail facility for continued rail service, or to preserve the corridor for another public-use condition as described in 49 C.F.R. §1152.28, the department will conduct one or more public hearings to receive public comments on the proposed acquisition. The commission believes that it is important for persons that may be affected by the loss of rail service to express their views concerning the preservation of the rail facility or corridor. As provided in subsection (d), in making a determination whether to preserve the rail facility or corridor, the

department will consider information contained in the notice and any application filed with the board, and information provided by a municipality, county, or district concerning the economic impact of an abandonment or discontinuance of service. This will allow the department to consider the amount of service performed on the line and the economic benefit of an acquisition in making a determination.

New §15.153 prescribes criteria that the commission will consider in determining whether to approve the acquisition of an abandoned rail facility. The criteria prescribed in this section are intended to ensure an acquisition facilitates the maintenance of existing rail systems necessary for the movement of materials and products to markets; economic and business development; the elimination of unemployment or underemployment; and the development and expansion of transportation and commerce in this state. The criteria are also necessary to: ensure consistency with criteria considered by the board in determining whether to permit abandonment; reduce any adverse impact on shippers or communities served by the rail facility proposed for abandonment and on the state transportation system; and ensure the preservation of rail facilities that remain viable for continued rail service.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the new sections as proposed are in effect, there will be no fiscal implications for state governments as a result of enforcing or administering the new sections. The new sections will be administered with existing department staff. The department anticipates that there will be fiscal implications for local governments as a result of gathering the required information to respond in a timely manner to department requests regarding the implications of abandonment or discontinuance of service upon their communities. Those costs cannot be quantified with any certainty, as it will depend on the nature and number of rail facilities for which abandonment is sought. There are no anticipated economic costs for persons required to comply with the sections as proposed.

James L. Randall, P.E., Director, Transportation Planning and Programming Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT

Mr. Randall has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new sections will be to ensure the preservation of rail facilities that remain viable for continued rail service, thereby facilitating economic and business development and the development and expansion of transportation and commerce. There will be no adverse economic effect on small businesses directly resulting from administering the new sections.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new rules. The public hearing will be held at 9:00 a.m. on January 9, 2004, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, 78701, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30

a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed new sections may be submitted to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on January 12, 2004.

**STATUTORY AUTHORITY:** The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.003, which authorizes the commission to adopt rules and the department to adopt procedures and prescribe forms necessary to implement Chapter 91.

**CROSS REFERENCE TO STATUTE:** Transportation Code, §91.071.

#### §15.150. Purpose.

Transportation Code, Chapter 91, authorizes the Texas Department of Transportation to acquire, finance, construct, maintain, and operate a passenger or freight rail facility or system, including the acquisition of abandoned rail facilities. House Bill 2, 78th Legislature, Third Called Session, 2003, directs the Texas Transportation Commission to adopt rules governing the disbursement of funds for the acquisition of abandoned rail facilities. In establishing criteria for the Texas Department of Transportation's acquisition of abandoned rail facilities, the Texas Transportation Commission is required to consider the local and regional economic benefit realized from the disbursement of funds in comparison to the amount of the disbursement. This subchapter prescribes policies and procedures for the Texas Department of Transportation's acquisition of abandoned rail facilities.

#### §15.151. Definitions.

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

- (1) Abandoned rail facilities--Rail facilities for which:

(A) a notice of intent to abandon or discontinue service has been filed with the Surface Transportation Board under 49 C.F.R. §1152.20;

(B) an application for abandonment or discontinuance of service has been filed with the Surface Transportation Board under 49 C.F.R. Part 1152; or

(C) abandonment or discontinuance of service has been authorized by the Surface Transportation Board.

(2) Commission--The Texas Transportation Commission.

(3) Department--The Texas Department of Transportation.

(4) District--A rural rail transportation district created under Texas Civil Statutes, Article 6550c.

(5) Rail facility--Real or personal property, or any interest in that property, that is determined to be necessary or convenient for the provision of a freight or passenger rail facility or system, including commuter rail, intercity rail, and high-speed rail.

#### §15.152. Public Involvement.

(a) On receipt of a notice of intent to abandon or discontinue service, the department shall coordinate with the governing body of any municipality, county, or district in which all or a segment of the rail facility is located to determine whether:

(1) the department should acquire the rail facility to which the notice relates; or

(2) any other actions should be taken to provide for continued rail transportation service.

(b) The department shall request that a municipality, county, or district in which all or a segment of the rail facility is located provide documentation concerning the local and regional economic impact of an abandonment or discontinuance of service.

(c) If the department determines that there is a need to preserve the rail facility for continued rail service, or to preserve the corridor for another public-use condition under 49 C.F.R. §1152.28, it will notify the municipalities, counties, or districts in which all or a segment of the rail facility is located, and will conduct one or more public hearings to receive public comment on the proposed acquisition.

(d) In making a determination under subsection (c) of this section, the department will consider:

(1) information contained in the notice of intent to abandon or discontinue service and any application for abandonment or discontinuance of service filed with the Surface Transportation Board with respect to that rail facility under 49 C.F.R. Part 1152, including the extent of any service performed on the rail line; and

(2) information provided by a municipality, county, or district concerning the economic impact of an abandonment or discontinuance of service.

(e) The department will hold at least one public hearing within at least one of the counties in which the rail facility is located and will file a notice of each hearing with the Secretary of the State for publication in the *Texas Register*.

#### §15.153. Criteria.

(a) In approving the acquisition of an abandoned rail facility, the commission will consider:

(1) service performed on the rail line in the two years preceding the date of the notice of intent to abandon or discontinue service;

(2) comments or other evidence in support of or opposition to the proposed abandonment or discontinuance of service received from interested parties;

(3) alternate sources of transportation services available, including alternate sources of rail transportation service;

(4) impact of the proposed abandonment or discontinuance of service on the operation of the state transportation system;

(5) local and regional economic impact of the abandonment or discontinuance of service;

(6) viability of the rail line for continued rail transportation service; and

(7) the extent to which the monetary value of the economic benefits attributable to the acquisition exceed the amount of funds disbursed by the department to acquire the rail facility.

(b) For purposes of this section, "service performed on the rail line" means the number of trains operated on the line and their frequency, and the total tonnage and carloads on the line.

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 November 25, 2003.

TRD-200308122

Richard D. Monroe  
General Counsel

Texas Department of Transportation

Earliest possible date of adoption: January 11, 2004

For further information, please call: (512) 463-8630



# 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)

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## TITLE 1. ADMINISTRATION

### PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

#### CHAPTER 126. SURPLUS AND SALVAGE PROPERTY PROGRAMS

##### SUBCHAPTER A. STATE SURPLUS AND SALVAGE PROPERTY

###### 1 TAC §126.2

The Texas Building and Procurement Commission has withdrawn from consideration the proposed amendment to §126.2 which appeared in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7904).

Filed with the Office of the Secretary of State on December 1, 2003.

TRD-200308184

Cynthia de Roch

General Counsel

Texas Building and Procurement Commission

Effective date: December 1, 2003

For further information, please call: (512) 463-4257

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## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 45. MARKETING PRACTICES

##### SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

###### 16 TAC §45.105

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d) the proposed amendments to §45.105, submitted by the Texas Alcoholic Beverage Commission, has been automatically withdrawn. The proposed amendments appeared in the May 16, 2003, issue of the *Texas Register* (28 TexReg 3885).

Filed with the Office of the Secretary of State on December 2, 2003.

TRD-200308216

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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 rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 23. ROSE GRADING

##### 4 TAC §23.3

The Texas Department of Agriculture (the department) adopts amendments to §23.3, concerning rose grading certificate of authority, without changes to the proposal published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9175).

The amendments to §23.3 are adopted to increase the new and renewal certificate of authority fees based on the number of roses graded and to ensure that costs associated with the administration of the department's rose grading regulatory activities are recovered, as required by the Texas Agriculture Code §12.0144. There have been no fee increases to the rose grading certificate of authority since 1976. The proposed amendments increase the fees for a rose grading certificate of authority from \$15 to \$18 for grading up to 110,000 roses; from \$25 to \$30 for grading 110,000 to 500,000 roses, from \$50 to \$60 for grading 500,001 to 1 million roses; and from \$100 to \$120 for grading over 1 million roses.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code, §121.007 which authorizes the department to adopt rules to carry out Chapter 121, and §121.004, which authorizes the department to establish and charge a fee for a certificate of authority issued under Chapter 121.

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 November 24, 2003.

TRD-200308083

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: December 14, 2003

Proposal publication date: October 24, 2003

For further information, please call: (512) 463-4075



## TITLE 22. EXAMINING BOARDS

## PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

### CHAPTER 651. FEES

#### 22 TAC §§651.1 - 651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts amendments to §651.1, concerning Occupational Therapy Board Fees, §651.2 concerning Physical Therapy Board Fees and §651.3 Administrative Services Fees without changes to the proposed text as published in the August 1, 2003 issue of *Texas Register* (28 TexReg 5976) and will not be republished.

The sections were amended to raise the fees for applications and renewals in compliance with House Bill 2985, and add a new fee for the ACH return fee.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 23, Subchapter H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 452, Occupational Code is affected by these amended sections.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by these amended sections.

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 November 26, 2003.

TRD-200308167

John Maline

Executive Director

Executive Council of Physical Therapy and Occupational Therapy Examiners

Effective date: January 1, 2004

Proposal publication date: August 1, 2003

For further information, please call: (512) 305-6900



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER D. FIRE AND ALLIED LINES INSURANCE

##### DIVISION 4. SMALL INSURER AND NEW INSURER RATE FILING REQUIREMENTS

###### 28 TAC §5.3301

The Commissioner of Insurance adopts new §5.3301 concerning residential property insurance filing requirements for small and new insurers. The subchapter is adopted with changes to the proposed text as published in the October 17, 2003 issue of the *Texas Register* (28 TexReg 9050).

New §5.3301 is being adopted to implement Insurance Code Article 5.142 §4(c), as enacted by the Regular Session of the 78th Legislature in Senate Bill 14, effective June 11, 2003. Article 5.142 §4(c) authorizes the commissioner to simplify rate filing requirements by rule for small and new insurers and to allow for the immediate use of filed rates by small and new insurers provided that the rate filing does not constitute a significant overall rate increase as determined by rule. New §5.3301 is necessary to provide the filing requirements for small and new insurers by specifying what information must be filed to comply with the rate filing requirements adopted under Article 5.142 §4(c). In addition, new §5.3301 is necessary to define an overall rate increase for the purpose of determining whether a small insurer or new insurer may immediately use a filed rate as provided by Article 5.142 §4(c).

To assure compliance with the rate standards established under Insurance Code Article 5.142, the department must pay closer attention to actuarial support and justification of rates in the early stages of implementation. For this reason, the new section allows the department to monitor actuarial support and justification of rates for a greater number of small insurers in the early stages of implementation under Insurance Code Article 5.142. A similar approach was enacted by the Regular Session of the 78th Legislature in Senate Bill 14, which contemplates a gradual lessening of regulatory supervision over time for residential property insurance rates as demonstrated by Insurance Code Articles 5.26-1, 5.142 and 5.13-2.

Under Article 5.142, the commissioner has discretionary authority to simplify rate filing requirements for small insurers and new insurers and to determine what constitutes a sufficient rate filing for small insurers and new insurers. New §5.3301(e) allows the commissioner to exercise this discretion with regard to requirements for filing actuarial support by establishing thresholds of \$10 million and \$20 million in direct written premium of small insurers for residential property insurance. Insurers defined under Insurance Code Article 5.142 as "small" vary greatly in size from under \$1 million to over \$80 million (two percent of the Texas homeowners market of approximately \$4.2 billion) in direct written premium. While the data for insurers at the small end of this range may not be fully credible, other insurers in this group should have fully credible data. For example, an insurer group at

the high end of the range would be the largest to the fifth largest insurer in eight of the 15 most populous states (Georgia, Illinois, Indiana, Massachusetts, New Jersey, North Carolina, Ohio and Washington). With more credible data, a better determination can be made as to whether the rates in fact satisfy the statutory requirements. Because of the wide range of size among "small" insurers in the state, a higher level of review of actuarial support or other justification of rates is necessary to assure compliance with the rate standards established under Insurance Code Article 5.142 for some but not all "small" insurers as reflected in thresholds established in new subsection (e).

Changes have been made to the subparagraph designations of proposed §5.3301 (e)(3) as published to reflect correct classification designations from lowercase Roman numerals to capital letters. New §5.3301(a) through (c), respectively, set forth the purpose, scope and definitions applicable to the entire section. Statutory definitions under Insurance Code Article 5.142 apply to this new section, including the definitions of "small insurer" under subsection (c)(1) and "new insurer" under (c)(2). A "small insurer" is defined as an insurer, including a Lloyd's plan insurer or reciprocal exchange, that during the previous calendar year wrote less than two percent of the total homeowners premium in the state; if such an insurer is part of an insurance group, the total aggregate homeowners premium for the group must be less than two percent for any insurer in the group to be considered a small insurer. A "new insurer" is an insurer that, as of the effective date of Senate Bill 14 (June 11, 2003) was not authorized to write residential property insurance in this state and was not affiliated with another insurer that was authorized to write and was writing residential property insurance as of the effective date of Senate Bill 14.

New §5.3301(d) sets forth the general filing requirements for small insurers and new insurers. Small and new insurers must submit to the department a filing memorandum, a filing transmittal and a company certification. In addition, small insurers must submit an exhibit that demonstrates the small insurers' general rate support. These requirements will provide the department with the information necessary to determine compliance with Article 5.142. Information required by form may be submitted on a form provided by the department or on the insurers' own form if the form contains the same information that is required by and contained in the form provided by the department.

New §5.3301(e) requires small insurers to submit actuarial support or other justification for an overall rate increase if: (a) for rates effective before March 1, 2004, a company had direct written residential property premium in the previous calendar year of more than \$10 million; and (b) for rates effective on or after March 1, 2004, a company had direct written residential property premium in the previous calendar year of more than \$20 million. This new subsection allows the department to monitor actuarial support and justification of rates for a greater number of small insurers in the early stages of implementation under Insurance Code Article 5.142. New §5.3301(f) provides that the department may request additional information as necessary relating to rate filings of small insurers or new insurers.

New §5.3301(g) provides that a small insurer or new insurer may immediately use a rate that has been submitted to the department in accordance with new subsections (d) and (e) of §5.3301, provided that the filed rate does not constitute an overall increase that is 10% or more than the lesser of the current rates or any other rates used by the insurer within the 12 months immediately preceding the rate filed under §5.3301. The provisions of



Insurance Code Article 5.142 §5, relating to prior approval, apply if any increase is 10% or more of the current rates or any other rates used by the insurer within the 12 months preceding the rates filed under §5.3301. Under this new subsection, small insurers and new insurers may make multiple rate changes in a 12 month period within the 10% allowable increase.

New §5.3301(h) clarifies that except as provided in this adopted section, the provisions of Insurance Code Article 5.142 apply to small insurers and new insurers, including the rating criteria set forth in Insurance Code Article 5.142 §3.

New §5.3301(i) clarifies that this rule expires on December 1, 2004, in accordance with the expiration of Insurance Code Article 5.142.

The department received no comments.

The new section is adopted under the Insurance Code Article 5.142 and §36.001. Article 5.142 §4(c) provides that the commissioner may simplify filing requirements by rule for small insurers and new insurers subject to: (1) the specified definition of a "small insurer"; (2) the specified definition of a "new insurer"; (3) a provision that the commissioner must specify what information the small insurer or new insurer must file to constitute a filing sufficient to comply with the filing requirements adopted under Article 5.142; and (4) a provision that the commissioner shall allow for the immediate use of filed rates provided the rate filing does not constitute a significant overall rate increase, as determined by rule. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

*§5.3301. Rate Filing Requirements Under Article 5.142 for Small and New Insurers Writing Residential Property Insurance.*

(a) Purpose. This section specifies what information a small insurer or a new insurer must file to comply with the filing requirements under Insurance Code Article 5.142. In addition, this section defines an overall rate increase for the purpose of determining whether a small insurer or a new insurer may immediately use a filed rate as provided by Insurance Code Article 5.142 §4(c)(4).

(b) Scope. This section applies to a small insurer or a new insurer, as defined in Insurance Code Article 5.142 §4(c)(1) and (2) respectively.

(c) Definitions. Words and terms defined in Insurance Code Article 5.142 shall have the same meaning when used in this section.

(d) General filing requirements.

(1) Small Insurer. A small insurer must complete and submit to the department a filing memorandum, a filing transmittal, a company certification, and a general rate level support as specified in subparagraphs (A) - (D) of this paragraph. The forms specified in subparagraphs (B)- (D) of this paragraph are provided by the department, and may be obtained from the department website ([www.tdi.state.tx.us](http://www.tdi.state.tx.us)) or, upon request, from the Texas Department of Insurance Property & Casualty Actuarial Division, Mail Code 105-5F, P.O. Box 149104, Austin, TX 78714-9104. For purposes of this section, in lieu of submitting a form provided by the department, a small insurer may submit to the department the insurer's own form if the form contains the same information that is required by and contained in the form provided by the department.

(A) A filing memorandum that briefly explains the purpose of the filing and all material background details relating to the

filing. For example, a filing memorandum may include one or more of the following, if applicable:

- (i) reasons for entry into a new market;
- (ii) reasons for offering additional coverages;
- (iii) reasons for offering new discounts;
- (iv) reasons for changing rates based on market conditions;

conditions;

- (v) changes in the insurer's goals and objectives;
- (vi) an explanation of insurer or insurer group reorganization; or

reorganization; or

(vii) data sufficient to determine the amount of the rate change, if any;

(B) FT (Sm or New Res. Prop.)- Filing Transmittal;

(C) FT (5.142 Cert.)- Company Certification. Certify by an officer of the insurer that all rate classifications, the rates applicable to those classifications, and the risk factors to which those classifications apply are based on reasonably sound and verifiable actuarial principles and that no classifications are unfairly discriminatory;

(D) Exhibit 1- General Rate Level Support.

(2) New Insurer. A new insurer must complete and submit to the department a filing memorandum, a filing transmittal, and a company certification as specified in subparagraphs (A)- (C) of this paragraph. The forms specified in subparagraphs (B) and (C) of this paragraph are provided by the department, and may be obtained from the department website ([www.tdi.state.tx.us](http://www.tdi.state.tx.us)) or, upon request, from the Texas Department of Insurance Property & Casualty Actuarial Division, Mail Code 105-5F, P. O. Box 149104, Austin, TX 78714-9104. For purposes of this section, in lieu of submitting a form provided by the department, a new insurer may submit to the department the insurer's own form if the form contains the same information that is required by and contained in the form provided by the department.

(A) A filing memorandum that briefly explains the purpose of the filing and all material background details relating to the filing. For example, a filing memorandum may include one or more of the following, if applicable:

- (i) reasons for entry into a new market;
- (ii) reasons for offering additional coverages;
- (iii) reasons for offering new discounts;
- (iv) reasons for changing rates based on market conditions;

conditions;

- (v) changes in the insurer's goals and objectives;
- (vi) an explanation of insurer or insurer group reorganization; or

reorganization; or

(vii) data sufficient to determine the amount of the rate or rate change, if any;

(B) FT (Sm or New Res. Prop.)- Filing Transmittal;

(C) FT (5.142 Cert.)- Company Certification. Certify by an officer of the insurer that all rate classifications, the rates applicable to those classifications, and the risk factors to which those classifications apply are based on reasonably sound and verifiable actuarial principles and that no classifications are unfairly discriminatory.

(e) Actuarial support. In addition to the information required under subsection (d)(1) of this section, a small insurer must submit to

the department actuarial support or other justification of rates, including market comparison, inflationary adjustment, or reference to an approved rate filing as follows:

(1) For rates effective before March 1, 2004, any rate filing that includes an overall rate increase sought by a small insurer with more than \$10 million in direct written residential property premium in the previous available calendar year shall be accompanied by actuarial support.

(2) For rates effective on or after March 1, 2004, any rate filing that includes an overall rate increase sought by a small insurer with more than \$20 million in direct written residential property premium in the previous available calendar year shall be accompanied by actuarial support.

(3) Actuarial support as used in this paragraph includes rate indications and support, including the data and methodologies utilized by the insurer for such indications. Actuarial support may be based on individual insurer or insurer group data. Supporting information for the indications must address each of the following if applicable:

- (A) premiums at current rate level;
- (B) loss and claim development factors;
- (C) current level factors;
- (D) premium and loss trend factors;
- (E) rate relativities (e.g. classification, territory, amount of insurance);
- (F) increased limits factors;
- (G) hurricane and non-hurricane catastrophe factors;
- (H) definition of a catastrophe and how it has changed over the experience period used to calculate the provisions;
- (I) deductible credits and debits;
- (J) description and support for discounts and surcharges;
- (K) off-balance factors if there have been changes in relativities (e.g. discounts, surcharges, territorial definitions);
- (L) credibility;
- (M) expense and profit provisions;
- (N) contingency provisions; and
- (O) description of how final rates are determined.

(f) Additional information. The department may request additional information as necessary relating to a rate filing of a small insurer or new insurer, including actuarial or other reasonable support of rates as deemed necessary by the department or commissioner. An insurer must respond within 10 business days of the date of the request for additional information, or by such time as determined by the department or commissioner. Failure to respond may result in administrative penalties and requirements to file under a rule or statute that would otherwise apply.

(g) Use of rate. A small insurer or new insurer may immediately use rates that have been submitted to the department in accordance with subsections (d) and (e) of this section, provided that the filed rates do not constitute an overall increase that is 10% or more than the lesser of the current rates or any other rates used by the insurer within the 12 months immediately preceding the rates filed under this section. The effective date of the rates may be upon the date of the filing or such later date as specified by the insurer. For the purposes of this section,

rates are filed with the department on the date the rate filing is received by the department. If any increase is 10% percent or more of the current rates or any other rates used by the insurer within the 12 months immediately preceding the rates filed under this section, the provisions of Article 5.142 §5 apply to the filing.

(h) Except as provided in this section, the provisions of Insurance Code Article 5.142 apply to small insurers and new insurers, including the rating criteria set forth in Insurance Code Article 5.142 §3.

(i) In accordance with Insurance Code Article 5.142 §17, this section expires December 1, 2004.

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 November 26, 2003.

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Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
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For further information, please call: (512) 463-6327

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 3. TEXAS YOUTH COMMISSION**

**CHAPTER 81. INTERACTION WITH THE PUBLIC**

**37 TAC §§81.1, 81.31, 81.41, 81.61, 81.63, 81.75**

The Texas Youth Commission (TYC) adopts amendments to §81.1, concerning Public Information Request; §81.31, concerning Weapons and Concealed Handguns; §81.41, concerning Confidentiality; §81.61, concerning Notification of Facility Opening or Relocating; and §81.75, concerning Copying Costs.

TYC adopts new §81.63, concerning Decentralization.

TYC adopts §§81.1, 81.61, 81.63, and 81.75 without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9203).

TYC adopts §81.31 and §81.41 with changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9203). The change to §81.31 deletes the double verbiage in subsection (c) "or programs." Changes to §81.41 corrects the title reference to (GAP) §99.9 and minor grammatical changes.

The justification for the amendment of the sections and the new section is to be in compliance with the recently enacted legislation and the availability of accurate, clear, and updated TYC policies.

The amendments and new section will comply with the recently enacted legislation and provide the availability of accurate policies.

No comments were received regarding adoption of the amendments and new section.

The amendments and new section are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to establish rules appropriate to the proper accomplishment of its functions.

The adopted amendments and new section implement the Human Resource Code, §61.034.

*§81.31. Weapons and Concealed Handguns.*

(a) Purpose. The purpose of this rule is to ensure that with regard to weapons and concealed handguns, the Texas Youth Commission (TYC) provides for the safety and security of its staff, youth, and the public.

(b) Possession of weapons, as defined in §46.01, Texas Penal Code, is prohibited on the premises of buildings, offices, facilities, or programs operated by or under contract with TYC except:

- (1) as specifically authorized by the executive director;
- (2) when carried by a law enforcement officer who is responding to a call by TYC in an emergency situation; or
- (3) as provided in subsection (c) of this policy.

(c) Possession of a concealed handgun, as authorized under Subchapter H, Chapter 411, Government Code, is authorized on the premises of all buildings, offices, facilities, or programs operated by or under contract with TYC except:

- (1) on the premises of residential facilities or programs operated by or under contract with TYC at which education is provided to youth; and
- (2) by TYC employees, volunteers, and contractors.

*§81.41. Confidentiality.*

(a) Purpose. The purpose of this rule is to provide confidentiality requirements to all employees, agents, consultants, volunteers, and other persons associated with the Texas Youth Commission (TYC).

(b) Applicability.

(1) See (GAP) §99.1 of this title (relating to Confidentiality of Youth Alcohol and Drug Abuse).

(2) See related (GAP) §81.37 of this title (relating to Public and Media).

(c) Employees, agents, consultants, volunteers, and any other persons associated with TYC shall not release or divulge confidential information about TYC youth except as required or permitted by law.

(d) Employees, agents, consultants, volunteers, and any other persons associated with TYC shall not release or divulge confidential information from personnel or other files except as required or permitted by law.

(e) Individual youth must not be discussed with persons who are not otherwise authorized unless those persons show written consent from the youth's committing judge. See (GAP) §99.9 of this title (relating to Access to Youth Information and Records).

(f) Identifying pictures, appearances, films or reports of youth shall not be used without written consent of a youth and, if under age 18, of his/her parents, guardian, or managing conservator. Refer to (GAP) §81.37 of this title (relating to Public and Media), and the Publicity Release form, CCF-025.

(g) Only initials or a case number may be used when referring to a youth in materials that are a matter of public information (e.g., appeals decision, statistical information, board meeting minutes) except for purchase voucher invoices that include youth names.

(h) TYC volunteers, consultants, and others permitted access to confidential information or records shall sign the Confidentiality Agreement for Non-TYC Employees form, LS-001 with TYC agreeing not to disclose or divulge, unless required or permitted to do so by law, confidential information or records. The Confidentiality Agreements shall be maintained by the appropriate TYC facility.

(i) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with TYC is, with a few exceptions, confidential and not subject to disclosure unless the member of the public affirmatively consents to its release. Release to another governmental body or a federal agency may be made without consent. Also, disclosure of an e-mail address may be made if it is:

- (1) provided to TYC by a person who has a contractual relationship with TYC or by the contractor's agent;
- (2) provided to TYC by a vendor who seeks to contract with TYC or by the vendor's agent;
- (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to TYC in the course of negotiating the terms of a contract or potential contract; or
- (4) provided to TYC on a letterhead, coversheet, printed document, or other document made available to the public.

(j) The confidentiality of alcohol and drug abuse records maintained by TYC is protected by federal law and regulations. Restrictions on disclosure apply to any information regarding alcohol and drug abuse, whether or not recorded.

(k) Youth educational records are also subject to federal laws and regulations on confidentiality.

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 November 24, 2003.

TRD-200308084

Neil Nichols

Acting Executive Director

Texas Youth Commission

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Proposal publication date: October 24, 2003

For further information, please call: (512) 424-6301



CHAPTER 85. ADMISSION AND  
PLACEMENT  
SUBCHAPTER A. COMMITMENT AND  
RECEPTION

**37 TAC §85.3**

The Texas Youth Commission (TYC) adopts an amendment to §85.3, concerning Admission Process, without changes to the

proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9206).

The justification for amending the section is to be in compliance with the recently enacted legislation.

The amendment will comply with the recently enacted legislation, which requires TYC to obtain a DNA specimen for a juvenile committed to TYC for an adjudication for capital murder.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted amendment implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Neil Nichols

Acting Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301



## SUBCHAPTER B. PLACEMENT PLANNING

### 37 TAC §§85.25, 85.33, 85.45, 85.61

The Texas Youth Commission (TYC) adopts amendments to §85.25, concerning Minimum Length of Stay; §85.33, concerning Program Completion and Movement of Sentenced Offenders; §85.45, concerning Parole of Undocumented Foreign Nationals; and §85.61 Discharge/Transfer of Custody without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9206).

The justification for amending the sections is to be in compliance with the recently enacted legislation and provide the availability of accurate, clear, and updated TYC policies.

The amendments will comply with the recently enacted legislation; and will increase the incentive for youth to adhere to parole program requirements and qualify for discharge.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions; and §61.075, which provides the Commission with the authority to order the youth's confinement under conditions TYC believes best designed for the youth's welfare and the interests of the public.

The adopted amendments implement the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308086

Neil Nichols

Acting Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301



## CHAPTER 87. TREATMENT

### SUBCHAPTER A. PROGRAM PLANNING

#### 37 TAC §87.5

The Texas Youth Commission (TYC) adopts an amendment to §87.5, concerning Family Involvement, with changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9209). Changes to §87.5 consist of minor grammatical corrections.

The justification for amending the section is compliance with recently enacted legislation.

The amendment will clarify parents' rights to communicate in-person privately with their child for reasonable periods of time. Conditions of the in-person communication may only be regulated to prevent disruption of scheduled activities and to maintain the safety and security of the facility. The amendment also establishes that youth age 18 and older must give written consent for information to be disclosed to a parent/guardian, with the exception that educational information on the youth may be shared with a parent, if the parent claims the youth as a "dependent student" as defined in section 152 of the Internal Revenue Code. A Parent/guardian of a youth younger than 18 shall be provided information without the youth's consent.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0761, which provides the Texas Youth Commission with the authority to develop programs that encourage family involvement in the rehabilitation of the child.

The adopted amendment implements the Human Resource Code, §61.034.

#### §87.5. *Family Involvement.*

(a) Purpose. The purpose of this rule is to establish the amount and type of involvement TYC encourages and seeks with the family of youth in jurisdiction.

(b) Families of youths younger than 18 shall be provided the information listed in this policy without regard to the youth's consent. Youths 18 and older must give written consent for information to be disclosed to a parent or guardian, with the exception that educational information on the youth may be shared with a parent that is the parent of a "dependent student" as defined in section 152 of the Internal Revenue Code of 1986.

(c) Families shall be given prompt written notification of youth placement.

(d) Written information sent to parents who may be non-English speaking shall be either translated to Spanish or accompanied by a letter stating that TYC will translate the information into the spoken language at the request of the parent.

(e) Families shall be provided at least:

(1) the name of the youth's primary service worker (PSW) and instructions for contacting him/her;

(2) rights and rules regarding visitation, mail, and telephone;

(3) rules regarding personal property;

(4) rules regarding parent sending money to youth; and

(5) information about locating the facility.

(f) Families are provided copies of Individual Case Plans (ICP).

(g) Youth's PSW shall:

(1) seek input from family for youth's ICP;

(2) encourage families to communicate concerns to facility administrators and/or PSW;

(3) encourage families to visit their child in any program and prepare for the youth's return home;

(4) whenever possible, counsel a youth's parents or guardians in preparation for the youth's return home;

(5) encourage youth to communicate with families by letter and/or telephone; and

(6) refer families to other agencies that provide services needed by the families.

(h) Youth may be allowed the privilege of a family visitation in the community.

(i) Parents shall have the right to communicate in person privately with the youth for reasonable periods of time. The time, place, and conditions of the private, in-person communication may only be regulated to prevent disruption of scheduled activities and to maintain the safety and security of the facility.

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 November 25, 2003.

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Neil Nichols

Acting Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301



## SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

### 37 TAC §87.79

The Texas Youth Commission (TYC) adopts an amendment to §87.79, concerning Discharge of Mentally Ill and Mentally Retarded Youth, with changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9209). Changes to the proposed text consist of minor grammatical corrections.

The justification for amending the section is compliance with recently enacted legislation.

The amendment will give TYC the option to refer a mentally ill youth to the appropriate mental health authority for outpatient services upon discharge if the youth is unable to progress in the agency's treatment program due to his/her mental illness.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.077, which provides the Commission the authority to discharge youth who have completed length of stay and who are unable to complete rehabilitation program because of mental illness or mental retardation.

The adopted amendment implements the Human Resource Code, §61.034.

*§87.79. Discharge of Mentally Ill and Mentally Retarded Youth.*

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby the Texas Youth Commission (TYC) discharges from custody youth who have completed length of stay requirements and who are unable to progress in the agency's rehabilitation programs because of mental illness or mental retardation.

(b) Applicability.

(1) Requirements in this policy do not apply to sentenced offender youth. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders) for policies relating to sentenced offenders.

(2) See (GAP) §85.61 of this title (relating to Discharge/Transfer of Custody) for discharge requirements for youth qualified herein and all other TYC youth.

(c) Youth, except sentenced offenders, who meet specific criteria herein, shall be discharged.

(d) Youth considered to be mentally ill or mentally retarded are those who have a current diagnosis of mental illness or mental retardation by a licensed psychologist and/or psychiatrist as required.

(e) Failure to progress shall be defined as inability to meet rehabilitation program completion requirements within initial minimum length of stay because of mental illness or mental retardation when appropriate program adaptations have been made to accommodate the youth's disability.

(f) Discharge Eligibility Criteria.

(1) Youth with a mental illness who are unable to complete rehabilitation programs shall be discharged. Such youth meet the following criteria:

(A) the youth has completed the initial minimum length of stay;

(B) the youth has been diagnosed with a primary brain disorder (e.g., psychotic disorder, bipolar disorder, major depression, organic disorder, severe neurological deficit); and

(C) an agency psychologist has determined that, primarily because of the mental illness, the youth is not able to complete the agency's rehabilitation program. The determination shall include a review of the adequacy of program adaptations to accommodate the youth's disability.

(2) Youth with mental retardation who are unable to complete the agency's rehabilitation program and therefore shall be discharged are those who meet the following criteria:

(A) the youth has completed the initial minimum length of stay;

(B) the youth has been diagnosed with mental retardation based upon the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association; and

(C) an agency psychologist has determined that, primarily because of the mental retardation, the youth is not able to complete the agency's rehabilitation program. The determination shall include a review of the adequacy of program adaptations to accommodate the youth's disability.

(g) Procedure for Discharge of Youth with Mental Disability.

(1) Mental Illness.

(A) For youth who meet discharge criteria for mental illness and not already receiving court-ordered mental health services, a TYC psychiatrist shall examine the youth to determine if he/she meets eligibility criteria for court-ordered mental health services listed in §574.034, Health and Safety Code.

(i) If the youth does not require court-ordered mental health services, the agency shall refer the youth for outpatient psychiatric treatment to the Mental Health Authority (MHA) in the youth's home county.

(ii) If the youth does meet criteria for court-ordered mental health services, the agency will file a sworn application for such services as provided in Subchapter C, Chapter 574, Health and Safety Code.

(I) The application for court-ordered services shall be filed in the youth's committing county, where the youth resides, or where the youth is found for determination of appropriate mental health services. Also see (GAP) §87.69 of this title (relating to Commitment to State Mental Hospitals) for relevant procedures.

(II) The appropriate primary service worker (PSW) or program administrator will conference with the legal and rehabilitation departments to determine in which county to file the Application for Temporary Mental Health Services, depending on the individual circumstances of the case.

(B) If a child is already receiving court-ordered mental health services, discharge is effective immediately upon becoming eligible for discharge under subsection (f) of this policy.

(C) If a child is not receiving court-ordered mental health services but determined to meet eligibility criteria for such services, discharge is effective the date the court enters an order regarding an application for court-ordered mental health services, or the 30th day after application is filed, whichever occurs first.

(D) If a youth does not meet eligibility criteria for court-ordered mental health services, discharge is effective on the date any action is taken by the home county MHA on the agency's referral for mental health services or 30 days from the date of the referral, whichever occurs first.

(E) At the time of discharge if a child is receiving mental health services outside the child's home county, the commission shall notify the MHA located in that county of the discharge not later than the 30th day after the date the child's discharge is effective.

(i) "Home county" is defined as the county the child is anticipated to be discharged to.

(ii) "Notify" means a letter, on agency letterhead, by the appropriate administrator or designee from the agency's facility or program, which was responsible for the child immediately prior to their commitment for mental health services, of their discharge.

(2) Mental Retardation.

(A) If a child is not receiving mental retardation services, but meets discharge criteria for mental retardation under subsection (f) of this policy and under Chapter 593, Health and Safety Code, the agency will determine if the child is mentally retarded and notify the Mental Retardation Authority (MRA) in the child's home county and provide a copy of the determination report.

(B) The appropriate administrator or designee from the agency's facility or program where the child is assigned will send a letter, on agency letterhead, requesting an Interdisciplinary Team Evaluation for mental retardation services.

(C) Discharge is effective on the date any action by the home county MRA is taken on the agency's notification requesting an Interdisciplinary Team Evaluation for mental retardation services or 30 days from the date of the request, whichever occurs first.

(D) If the child is already receiving mental retardation services, discharge is effective immediately upon becoming eligible for discharge under subsection (f) of this policy.

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 November 24, 2003.

TRD-200308087

Neil Nichols

Acting Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301

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**37 TAC §87.85**

The Texas Youth Commission (TYC) adopts the repeal of §87.85, concerning Sex Offender Registration, without changes to the proposal as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9211).

The justification for the repeal is to allow for a new section to be published which complies with recently enacted legislation.

The repeal will allow for a new section with the same number and title to be published in its place.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Code of Criminal Procedure, §62.02, which provides the Texas Youth Commission with the authority to register certain youth as sex offenders.

The adopted repeal implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Neil Nichols

Acting Executive Director

Texas Youth Commission

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### 37 TAC §87.85

The Texas Youth Commission (TYC) adopts new §87.85, concerning Sex Offender Registration, with changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9212). Changes to the proposed text consist of minor grammatical corrections.

The justification for the new section is compliance with recently enacted legislation.

The new section will comply with Sex Offender Registration requirements in accordance with Chapter 62 of the Texas Code of Criminal Procedure, regarding registration of sex offenders who are in the custody of TYC.

No comments were received regarding adoption of the new section.

The new section is adopted under the Code of Criminal Procedure, §62.02, which provides TYC with the authority to register certain youth as sex offenders.

The adopted section implements the Human Resource Code, §61.034.

#### §87.85. Sex Offender Registration.

(a) Purpose. The purpose of this policy is to provide criteria and a process whereby staff may assess and ensure compliance with sex offender registration requirements as provided in Chapter 62 of the Texas Code of Criminal Procedure, regarding registration of sex offenders who are in the custody of the Texas Youth Commission (TYC).

(b) Applicability.

(1) This rule applies to youth who have a reportable adjudication as defined by Chapter 62 of the Code of Criminal Procedure.

(2) See (GAP) §87.87 of this title (relating to Sex Offender Risk Assessment).

(c) Explanation of Terms Used.

(1) Reportable Adjudication--an adjudication of delinquent conduct for any of the following offenses:

- (A) Indecency With a Child (§21.11 of the Texas Penal Code);
- (B) Sexual Assault (§22.011);
- (C) Aggravated Sexual Assault (§22.021);

(D) Prohibited Sexual Conduct (§25.02);

(E) Aggravated Kidnapping (§20.04(a)(4)), with the intent to violate or abuse the victim sexually;

(F) Burglary (§30.02(d)), with the intent to commit any of the five (5) offenses listed above;

(G) Compelling Prostitution (§43.05);

(H) Sexual Performance by a Child (§43.25);

(I) Possession or Promotion of Child Pornography (§43.26);

(J) Unlawful Restraint (§20.02), Kidnapping (§20.03), or Aggravated Kidnapping (§20.04), if the victim was younger than 17 years of age;

(K) The attempt, conspiracy, or solicitation to commit any of the offenses listed above; and

(L) Indecent Exposure (§21.08), if it is the second or more conviction or adjudication.

(2) Full Registration--a youth must register or verify registration with the local law enforcement authority and registration information regarding the youth will be maintained in a centralized database including posting of registration information on the Internet.

(3) Non-Public Registration--youth is required to register as a sex offender but the registration information is not considered public information and may only be used by law enforcement and criminal justice agencies. Information regarding the youth may not be posted on the Internet or released to the public.

(4) Deferred Registration--the duty to register as a sex offender is waived until the youth successfully completes treatment for the sex offense.

(5) Excused or Waived Registration--the youth has a reportable adjudication, but is not required to register as a sex offender.

(6) Completion of Treatment for Sex Offense--a youth has successfully completed treatment for the sex offense if the youth has ever obtained phase A4, B4, and C4 of the Resocialization Program.

(d) Regardless of classification, any youth who has a reportable adjudication will receive treatment for the sex offense while committed to TYC.

(e) Youth who have a reportable adjudication are required by law to register as a sex offender, unless the court either excuses or defers the registration requirement.

(f) Full Registration. If a youth has a reportable adjudication and the duty to register has not been excused or deferred, the following must occur:

(1) before the youth is released from a secure facility or program, the primary service worker (PSW) shall ensure that the level of risk to the community is determined and a number risk level of one, two, or three is assigned as required by (GAP) §87.87 of this title;

(2) the appropriate staff shall ensure that all "pre-release notifications" located on Texas Department of Public Safety (TDPS) form, CR-32, have been read and explained to the youth;

(3) the appropriate staff shall require the youth to sign the Pre-Release Notification form CR-32 (TDPS form) verifying the youth was informed of the duties to register and an explanation of the "pre-release notifications." If the youth refuses to sign the Pre-Release Notification form CR-32 (TDPS form), the appropriate staff shall sign the form certifying that the youth received the notifications; and

(4) at least seven (7) days before the date of release from a secure facility or contract program the PSW shall complete and send the Sex Offender Registration form, CR-32 (TDPS form) with the numeric risk level to the TDPS and the local law enforcement authority in the county in which the youth is expected to reside. Appropriate staff shall obtain a complete set of fingerprints using the Sex Offender Registration/Verification Fingerprint Card form, CR-36 (TDPS form) and a photograph of the youth.

(g) Deferred Registration.

(1) If the duty to register has been deferred, the PSW will send written notice certifying completion of treatment for the sex offense to the court and prosecuting attorney (that adjudicated the youth for the sex offense) within ten (10) days following verification of completion of treatment for the sex offense.

(2) If a youth successfully completes treatment for the sex offense the youth shall not be required to register as a sex offender unless additional orders are received from the court.

(3) If the duty to register has been deferred and the youth is discharged from TYC without successfully completing treatment for sex offense, the PSW shall register the youth as required in subsection (f) of this policy.

(h) Notification of Changes in Status.

(1) If TYC receives information that a youth who is required to register as a sex offender has any changes which affect proper supervision of the youth, including name changes, changes to physical health, job, incarceration, or conditions of parole, the appropriate staff shall notify the PSW of the change(s). The PSW shall notify the local law enforcement authority of the change(s) within ten (10) days following receipt of the information.

(2) If TYC receives information that a youth who is required to register as a sex offender has changed or intends to change address, the PSW shall notify the local law enforcement authority of the change within three (3) days of obtaining the information.

(i) Interstate Compact on Juveniles (ICJ).

(1) Youth who have been adjudicated for an offense under the laws of another State or Federal law that contain elements that are substantially similar to an offense requiring registration under Chapter 62 of the Code of Criminal Procedure must be registered by the PSW. When a youth is placed in TYC custody the PSW ensures that all "pre-release notifications," located on the TDPS Pre-Release Notification form, CR-32, have been read and explained to the youth.

(2) A youth with a duty to register as a sex offender, who has an out-of-state order excusing sex offender registration, must register in the State of Texas as a sex offender until the duty to register expires, or is waived or excused by an order issued by a Texas court.

(j) DNA Records.

(1) A youth with a "reportable adjudication" shall provide one or more blood samples or other specimens for the purpose of creating a DNA record.

(2) The appropriate staff shall obtain and preserve blood samples or other specimens from the youth.

(3) The appropriate staff shall keep a record of the collection of the sample and send the blood sample or other specimen to the director of TDPS or designee.

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 November 24, 2003.

TRD-200308089

Neil Nichols

Acting Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301



## CHAPTER 91. PROGRAM SERVICES SUBCHAPTER B. EDUCATION PROGRAMS

### 37 TAC §91.41, §91.43

The Texas Youth Commission (TYC) adopts amendments to §91.41, concerning Education Administration, and §91.43, concerning Basic Education. Section 91.43 is adopted without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9213). Section 91.41 is adopted with changes to the proposed text as published. Changes to §91.41 consist of minor grammatical corrections.

The justification for amending the sections is compliance with recently enacted legislation.

The amendments clarify that TYC youth are administered state educational assessments required to complete a high school diploma. TYC principals will develop an appropriate education plan for youths under 14 years of age and for youths who have already obtained a diploma.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.121, which requires the Texas Youth Commission to provide adequate employment and vocational training for youth in its care; and §61.076, which provides the Texas Youth Commission with the authority to require youth in its care to participate in academic training and activities.

The adopted amendments implement the Human Resource Code, §61.034.

#### §91.41. *Education Administration.*

(a) Purpose. The purpose of this rule is to establish basic requirements for the administration of educational services consistent with applicable federal and state laws and the educational needs of Texas Youth Commission (TYC) youth.

(b) All youth shall attend school unless staff has approved a youth over the compulsory school attendance age for alternative training or a work program. Youth under the state compulsory school attendance majority age will be enrolled in school.

(c) Institutions.

(1) TYC schools are accredited under the provisions of the Texas Education Code, Chapter 30, Subchapter E.

(2) Educational programs will comply with applicable federal and state requirements.

(3) All youth will be enrolled in an education program. Youth who have completed high school will be in a post high school



training/education program and may be employed part-time. Youth who have completed a high school diploma or the equivalent will continue to participate in reading and math instruction until they have reached 12.9 on the Test of Adult Basic Education in both areas, or until they are released from TYC institutions.

(4) The principal, assistant principal, diagnostician, Reintegration of Offenders-Youth (RIO-Y) Counselor, licensed school psychologist, or qualified teacher will provide educational and vocational counseling to youth.

(5) The school schedule will include a minimum of seven (7) hours of instruction daily, including intermissions and recesses, according to the school calendar established annually by the central office education department. Four (4) of the seven (7) hours must be in core curriculum areas. The superintendent of education may grant waivers for less than seven (7) hours, but not less than four (4) hours, of school.

(6) The school will offer all credits necessary to meet the minimum high school program requirements following the state curriculum and will administer state assessments required for graduation.

(7) Student mastery of state curriculum requirements for high school credits will be documented and retained in student education files for verification of course completion.

(8) GED preparation classes and testing will be available to all students.

(9) Schools will provide library services for youth on campus.

(10) Schools will use available federal funds to provide required specialized education and vocational training instruction/training not available in the institution.

(11) Teaching schedule provides each teacher a minimum of 45 minutes per day for preparation.

(d) Halfway Houses and Contract Programs.

(1) Staff will ensure that all community facilities serving TYC youth have access to approved educational services.

(2) Staff will ensure that community facilities follow the guidelines established jointly by TYC and TEA for their utilizing public school services.

(e) Parole.

(1) Youth who have not received a high school diploma or high school equivalency certificate are expected to be enrolled in an education program and attending regularly.

(2) Staff will assist youth who have received a high school diploma or high school equivalency certificate in enrolling in a post secondary training/education program or in obtaining full-time employment.

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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Neil Nichols

Acting Executive Director

Texas Youth Commission

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## SUBCHAPTER C. YOUTH EMPLOYMENT AND WORK

### 37 TAC §91.63

The Texas Youth Commission (TYC) adopts an amendment to §91.63, concerning Youth Industries Program, Initial Preparation, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9214).

The justification for amending the section is compliance with recently enacted legislation, as well as the availability of clear, accurate, and current TYC policies.

The amendment makes provision for the computation of wages by the Texas Workforce Commission as part of the Prison Industry Enhancement Certification Program. The rule also provides for the designation of proposed employers as cost accounting centers (CAC); identifies specific labor and business organizations to be consulted as part of the CAC designation process; identifies specific governmental entities from which verification of environmental and cultural resource compliance must be obtained; and requires youths' voluntary agreement relating to deductions that will be made from gross wages.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.121, which requires the Texas Youth Commission to provide adequate employment and vocational training for youth in its care.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 93. YOUTH RIGHTS AND REMEDIES

### 37 TAC §93.1

The Texas Youth Commission (TYC) adopts an amendment to §93.1, concerning Basic Youth Rights, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9217).

The justification for amending the section is compliance with recently enacted legislation.

The amendment gives parents of TYC youth the right to in-person, private communication, limited only by prevention of disruption to regularly scheduled activities and the safety and security of the facility.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to establish rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### 37 TAC §93.33

The Texas Youth Commission (TYC) adopts the repeal of §93.33, concerning Alleged Mistreatment, without changes to the proposed text as published in the October 24, 2003 issue of the *Texas Register* (28 TexReg 9218).

The justification for the repeal is to implement a more efficient and thorough system for reporting and investigating alleged mistreatment of youth in TYC custody.

The repeal will allow for a substantially revised rule to be published.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034 and §61.045, which provides the Texas Youth Commission with the authority to establish rules appropriate for the accomplishment of its functions and to care for the welfare and rehabilitation of youth in its custody.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### 37 TAC §93.33

The Texas Youth Commission (TYC) adopts new §93.33, concerning Alleged Abuse, Neglect and Exploitation, without changes to the proposed text as published in the October 24, 2003 issue of the *Texas Register* (28 TexReg 9218).

The justification for the new rule is to provide a thorough and efficient process for reporting and investigating alleged abuse, neglect and exploitation.

The new rule will simplify the process for reporting and investigating alleged abuse, neglect, and exploitation. The rule will be limited only to the investigation of alleged abuse, neglect and exploitation as those terms are defined in the Family Code. Even if it is found that no abuse, neglect or exploitation occurred, the new rule established that the investigation would go further to determine if what is found to have occurred constitutes a violation of agency policy or of a standard of care. If violations of policy or standards of care are found, corrective action would be called for, regardless of how the allegation was originally categorized.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.034 and §61.035, which provides the Texas Youth Commission with the authority to establish rules appropriate for the accomplishment of its functions and to care for the welfare and rehabilitation of youth in its custody.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### 37 TAC §93.53

The Texas Youth Commission (TYC) adopts an amendment to §93.53, concerning Appeal to Executive Director, with changes to the proposed text as published in the October 24, 2003, issue

of the *Texas Register* (28 TexReg 9221). Changes to the proposed text consist of minor grammatical corrections.

The justification for amending the section is to ensure the rule has accurate reference information.

The amendment will allow for a reference change relating to alleged mistreatment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

*§93.53. Appeal to Executive Director.*

(a) Purpose. The purpose of this rule is to permit Texas Youth Commission (TYC) youth, their parents or guardians, and TYC or contract program employees to appeal decisions made by TYC or contract program employees to the TYC executive director.

(b) An appeal to the executive director may be filed after all preliminary levels of appeal have been exhausted, concerning any TYC or contract program employee decision regarding a complaint.

(c) A direct appeal to the executive director may be filed in matters limited to:

- (1) parole revocation;
- (2) reclassification;
- (3) classification;
- (4) a disciplinary transfer or assigned disciplinary length of stay under (GAP) §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence);
- (5) behavior management program length of stay and extension under (GAP) §95.17 of this title (relating to Behavior Management Program);
- (6) aggression management program length of stay under (GAP) §95.21 of this title (relating to Aggression Management Program);
- (7) a disapproved home evaluation;
- (8) an appeal of a level IV hearing when a youth is being detained in a location other than a TYC operated institution;
- (9) a result of the second and subsequent level IV hearing pursuant to (GAP) §95.59 of this title (relating to Level IV Hearing Procedure) when a youth is in an institution detention program;
- (10) a decision to extend the youth's stay in the security program, if the youth has already been in the security program for 240 continuous hours or longer;
- (11) a decision from a mental health status review hearing pursuant to (GAP) §95.71 of this title (relating to Mental Health Status Review Hearing Procedure);
- (12) a decision from a Title IV-E hearing; or
- (13) the conduct of an alleged mistreatment investigation pursuant to (GAP) §93.33 of this title (relating to Alleged Abuse, Neglect, and Exploitation).

(d) All appeals to the executive director must be filed within six (6) months of the decision being appealed. Appeals filed after that time may be considered at the discretion of the executive director.

(e) The executive director shall respond to each appeal, in writing, within 30 working days after receipt of the appeal. When the response cannot be completed within 30 working days, a delay letter explaining that the decision is delayed but will be forthcoming is sent to the complainant. Failure to respond to an appeal within this time period will constitute an exhaustion of administrative remedy for purposes of appeal to the courts, but will not be construed as acceptance or rejection of any contention made in the appeal.

(f) Opinions are distributed to the youth, the youth's attorney or representative, if any, and certain TYC staff.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 95. YOUTH DISCIPLINE

### SUBCHAPTER A. DISCIPLINARY PRACTICES

#### **37 TAC §95.17**

The Texas Youth Commission (TYC) adopts an amendment to §95.17, concerning Behavior Management Program, with changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9222). Changes to the proposed text consist of minor grammatical corrections.

The justification for amending the section is to regulate a youth's confinement under conditions best designed for the youth's welfare and the interests of the public.

The amendment will allow for contract residential programs to assign youth to a Behavior Management Program, conditioned upon the approval of the Executive Director or designee.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to regulate youth's confinement under conditions best designed for the youth's welfare and the interests of the public.

The adopted rule implements the Human Resource Code, §61.034.

*§95.17. Behavior Management Program.*

(a) Purpose. The Behavior Management Program (BMP) is a placement for a Texas Youth Commission (TYC) youth to be placed and assigned a 90-day disciplinary maximum length of stay as a consequence for behavior that violates rules. The purpose of this rule is

to ensure that the youth is sufficiently in control to be returned to general population as affirmed by compliance with the BMP. Disciplinary transfer and segregation with an assigned maximum length of stay is a major consequence.

(b) Referring to BMP. Youth who are eligible for placement in the BMP are:

(1) youth whose conduct meets eligibility criteria described below; and

(2) youth who are assigned to a TYC-operated institution; or

(3) youth who are assigned to a residential contract program (only with the approval of the executive director or designee).

(c) Applicability. This rule does not apply to:

(1) the use of the same or adjacent space when used specifically as security intake. See (GAP) §97.37 of this title (relating to Security Intake);

(2) the use of the same or adjacent space when used specifically as a security program. See (GAP) §97.40 of this title (relating to Security Program);

(3) the use of the same or adjacent space when used specifically as detention in a TYC institution. See (GAP) §97.43 of this title (relating to Institution Detention Program);

(4) the use of the same or adjacent space when used specifically as protective custody. See (GAP) §97.45 of this title (relating to Protective Custody);

(5) the use of same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation);

(6) the aggression management program. See (GAP) §95.21 of this title (relating to Aggression Management Program).

(d) Explanation of Terms Used.

(1) Special Services Panel - a panel comprised of special services members that review the recommendation for admission to BMP made by the youth's caseworker.

(2) Program Review Panel - a three-person panel chaired by the assistant superintendent, which reviews BMP extension requests.

(3) Individual Behavior Management Plan (IBMP) - a plan developed for each youth in the BMP which consists of objectives which address the behavior or cluster of behaviors that prevent the youth from successfully participating in regular programming.

(4) Aggression Management Program (AMP) - a program designed for removing youth from the general population for dangerously aggressive behavior.

(5) Admissions, Review, and Dismissal (ARD) committee - a committee that makes decisions on educational matters of special education students.

(6) Individual Education Plan (IEP) - the prescribed plan by which education will be delivered to a special education student.

(e) Program Eligibility and Admission.

(1) Eligibility.

(A) Youth eligible for the BMP are youth who knowingly engage in, aid, or abet someone else to engage in one or more of the following behaviors:

(i) willful destruction of property of \$100 or more;

(ii) assault resulting in bodily injury; or

(iii) escape or attempted escape as defined in (GAP) §97.29 of this title (relating to Directives to Apprehend); or

(iv) intentionally participating in riotous conduct as defined in (GAP) §97.27 of this title (relating to Riot Control); or

(v) engaging in sexual assault, aggravated sexual assault, or inappropriate sexual contact other than just kissing; or

(vi) possessing any item defined as a weapon in the Penal Code or threatening others with use of an object which could be used as a weapon; or

(vii) threatening imminent bodily injury to others; or

(viii) possessing a controlled substance; or

(ix) engaging in self-harm; or

(x) chronic and substantial disruption of the routine of the facility program with ten (10) or more security admissions or extensions to security intake or security program in a three (3) month period or five (5) or more security admissions or extensions in a 30-day period, without reduction in the frequency of the disruptive behaviors. Disruptive behavior is behavior that prevents or significantly interferes with others' ability to participate in scheduled activities and programs.

(B) Referral is made to a Special Services Panel and approved by the assistant superintendent based on a determination that the following criteria have been met:

(i) the youth poses a continuing risk for identified admitting behavior(s); and

(ii) when appropriate, less restrictive methods of documented intervention have failed and are unable to manage the risk; and

(iii) the mental status of the youth is assessed and there are no therapeutic contraindications for admission to the BMP.

(2) Due Process Hearing. If there is a finding of true with no extenuating circumstances in a level II hearing that the youth engaged in one of the behavioral criteria listed in paragraph (1)(A)(i) of this subsection, the youth is admitted to the BMP with an assigned 90-day disciplinary maximum length of stay. See (GAP) §95.55 of this title (relating to Level II Hearing Procedure).

(3) Appeal. The youth shall be notified in writing of his/her right to appeal to the executive director. See (GAP) §93.53 of this title (relating to Appeal to Executive Director). The pendency of an appeal shall not preclude implementation of the decision.

(4) Dispositions. Pursuant to a level II hearing herein, certain youth who are assessed a disposition under this rule may also be assigned a disciplinary minimum length of stay disposition but only if criteria have been met and if the youth was given notice of the specific disposition request. All policy and program requirements of (GAP) §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence) will apply to the assignment of such.

(5) A BMP length of stay runs concurrently with a youth's classification minimum length of stay, or any disciplinary assigned minimum length of stay.

(6) Families are notified of youth's admission to the BMP within 24 hours of the hearing.

(f) Program Completion.

(1) An IBMP must be developed for each youth. The plan will consist of objectives that address the behavior or cluster of behaviors that prevent the youth from successfully participating in regular programming. The plan will be explained to the youth and he/she will sign the plan in acknowledgment.

(2) A youth shall be released when one of the following occurs:

(A) youth has met specific performance objectives on the IBMP; or

(B) youth has completed his/her length of stay; or

(C) youth is transferred to the AMP pursuant (GAP) §95.21(c)(3) of this title (relating to Aggression Management Program).

(g) Program Extension.

(1) An extension of up to 30 days may be recommended by a Program Review Panel and approved by the superintendent if the following criteria have been met:

(A) youth's behavior does not comply with program; and

(B) an appropriate IBMP addressing the non-conforming behaviors of the youth has been developed and implemented; and

(C) the modified IBMP can be completed within 30 days; and

(D) the mental status of the youth was assessed and there are no therapeutic contraindications for continued confinement in the BMP.

(2) Reporting. A Program Review Panel Report must be completed and forwarded to the superintendent within ten (10) working days following the hearing. The report shall include the panel's findings and explanation of the rationale for the findings. If the decision is appealed, the report should be expedited.

(3) Appeal. The youth shall be notified in writing of his/her right to appeal to the executive director. See (GAP) §93.53 of this title (relating to Appeal to Executive Director). The pendency of an appeal shall not preclude implementation of the decision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER B. DUE PROCESS HEARINGS PROCEDURES**

**37 TAC §95.55**

The Texas Youth Commission (TYC) adopts an amendment to §95.55, concerning Level II Hearing Procedure, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9223).

The justification for amending the section is to ensure that current and accurate references are available to TYC employees and youth.

The amendment allows for a reference clarification relating to Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**CHAPTER 97. SECURITY AND CONTROL  
SUBCHAPTER A. SECURITY AND CONTROL**

**37 TAC §§97.1, 97.10, 97.29, 97.43**

The Texas Youth Commission (TYC) adopts amendments to §97.1, concerning Facility Security; §97.10, concerning Entry Searches; §97.29, concerning Directives to Apprehend; and §97.43, concerning Institution Detention Program.

Section 97.29 is adopted without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9224).

Sections 97.1, 97.10, and 97.43 are adopted with changes to the proposed text as published in the October 24, 2003 issue of the *Texas Register* (28 TexReg 9223). The changes to §97.1 and §97.10 consist of updating a reference to another rule which has been re-named. The changes to §97.43 consist of minor formatting changes.

The justification for amending the sections is to ensure policy compliance with recently enacted legislation.

The amendments to §97.1 and §97.10 comply with SB 501, enacted by the 78th Legislature, to ensure that possession of weapons are prohibited on the premises of buildings, offices, facilities, or programs operated by or under contract with TYC, with exceptions as defined in §81.31.

The amendment to §97.29 renames the rule to more accurately represent the content, as well as clarifies the criteria for issuing a Directive to Apprehend. A Directive to Apprehend may be issued pursuant to Texas Human Resources Code §61.093 if a youth in TYC custody has failed to comply with the written conditions of release under supervision (parole).

The amendment to §97.43 updates a reference to another rule. The rule will now refer to GAP §95.3 for the definitions of Escape and Attempted Escape.

No comments were received regarding adoption of the amendments.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions, and §61.093, which provides the authority to issue a Directive to Apprehend regarding youth in TYC custody who escape or who have broken the conditions of release under supervision.

The adopted rule implements the Human Resource Code, §61.034.

*§97.1. Facility Security.*

(a) Purpose. The purpose of this rule is to establish minimum safety and security requirements for Texas Youth Commission (TYC) operated facilities where youth reside.

(b) Applicability. This rule does not specify fire prevention or facility maintenance requirements. See the agency Risk Management manual.

(c) Weapons are not permitted in any TYC facility or on any facility grounds except as set forth in (GAP) §81.31 of this title (relating to Weapons and Concealed Handguns). Weapons are permitted in the personal residence of staff who live adjacent to the campus.

(d) Chemical agents may be used only to the extent necessary to ensure the safety and welfare of youth and staff in accordance with (GAP) §97.25 of this title (relating to Use of Force: Chemical Agent OC).

(e) Under no circumstances shall a stimulant, tranquilizer or psychotropic drug be administered for the purpose of program management and control, or for experimentation and research.

(f) Facilities shall ensure access to the necessary equipment to maintain essential light and a system of communication within the facility and between the facility and the community for use in an emergency.

*§97.10. Entry Searches.*

(a) Purpose. The purpose of this rule is to establish rules for conducting searches at the entry point of Texas Youth Commission (TYC) facilities to prevent the introduction of prohibited items.

(b) Any person entering a secure facility may be asked to submit to a search of his/her person and of any property he/she is bringing into the facility.

(c) Search will be conducted in a reasonable manner and use the least intrusive method possible as determined by the circumstances.

(d) Entry searches may be conducted by one or more of the following methods:

- (1) use of metal detectors (walk-through or wand);
- (2) use of trained detection dogs;
- (3) visual or touch inspection of property;

(4) requiring pockets to be emptied; or

(5) pat-down body search by a person of the same gender outside the person's clothing.

(e) Any person who refuses to be searched may be prohibited from entering the facility and may be subject to other administration action, as appropriate.

(f) Any person who refuses to have his/her personal property searched may be prohibited from taking such property into the facility and may be subject to other administrative action, as appropriate.

(g) Any item that is, or appears to be, a prohibited item may be seized.

(h) Seized items may be turned over to a law enforcement agency for identification or disposition.

(i) If personal property is seized, the agency will determine within 24 hours (or the next business day if on a weekend or holiday), whether the item(s) will be retained as evidence for an administrative investigation, turned over to a law enforcement agency for disposition, or returned to the person from whom the property was seized and will so notify such person.

(j) The following items are prohibited in secure facilities except with specific permission from the facility administrator:

(1) Weapons (as defined in Section 46.01 of the Texas Penal Code) and personal defense items such as pepper spray. See (GAP) §81.31 of this title (relating to Weapons and Concealed Handguns);

(2) Pornographic materials in any form;

(3) Tobacco products;

(4) Lighters or matches;

(5) Alcohol or illegal drugs (employees taking prescription or non-prescription medication(s) may bring in the amount needed during the work day and are responsible for its safekeeping);

(6) Metal nail files or nail clippers;

(7) Glass containers;

(8) Personal tools;

(9) Cameras or video equipment; or

(10) Any other item perceived by searching staff to be dangerous. The item will be referred to the superintendent or designee for consideration.

(k) The above list of prohibited items will be prominently posted at each entrance to a secure facility.

(l) Items on the prohibited list may be seized during entry searches.

(m) Individual facilities may not add items to the prohibited list. Requests to include additional items on the list must be made in writing to the deputy executive director and include a justification for designating an item as prohibited. Any additions to the list will be applicable to all agency residential facilities.

(n) Detection dogs will be used in a manner that preserves personal dignity.

*§97.43. Institution Detention Program.*

(a) Purpose. The purpose of this rule is to establish criteria and procedures for detaining appropriate Texas Youth Commission (TYC) youth in an Institution Detention Program (IDP) operated within each TYC institution or secure contract program, who have charges against

them pending or filed, or are awaiting a due process hearing or trial, or awaiting transportation subsequent to a due process hearing or trial.

(b) Applicability.

(1) This rule applies to TYC youth detained in TYC operated institutions or secure contract programs for pre-hearing or post-hearing pending transportation.

(2) This rule does not apply to:

(A) TYC youth detained in community detention facilities. See (GAP) §97.41 of this title (relating to Community Detention);

(B) the use of the same or adjacent space when used specifically as security intake. See (GAP) §97.37 of this title (relating to Security Intake);

(C) the use of the same or adjacent space when used specifically as a security program. See (GAP) §97.40 of this title (relating to Security Program);

(D) the use of the same or adjacent space when used specifically as disciplinary segregation. See (GAP) §95.17 of this title (relating to Behavior Management Program);

(E) the use of the same or adjacent space when used specifically as protective custody. See (GAP) §97.45 of this title (relating to Protective Custody);

(F) the use of the same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation); and

(G) the aggression management program (AMP). See (GAP) §95.21 of this title (relating to Aggression Management Program).

(c) Explanation of Terms Used. Detention Review Hearing - the TYC level IV hearing required by this policy.

(d) Criteria for Placement in an Institution Detention Program.

(1) Designated staff will conduct a review to determine whether admission criteria have been met.

(2) Admission Criteria for Detention Up To 72 Hours.

(A) A youth assigned to a TYC-operated institution or secure contract program may be admitted to the IDP program (for up to 72 hours):

(i) if the youth is awaiting transportation subsequent to a due process hearing or trial; or

(ii) if a due process hearing or trial has been requested in writing or charges are pending or have been filed; and

(iii) there are reasonable grounds to believe the youth has committed a violation; and

(iv) one of the following applies:

(I) suitable alternative placement within the facility is unavailable due to on-going behavior of the youth that creates disruption of the routine of the youth's current program; or

(II) the youth is likely to interfere with the hearing or trial process; or

(III) the youth represents a danger to others; or

(IV) the youth has escaped or attempted escape as defined in (GAP) §95.3 of this title (relating to Rules of Conduct).

(B) A youth who is assigned to a placement other than a TYC operated institution or secure contract program may be detained in a TYC operated IDP (up to 72 hours):

(i) if a due process hearing or trial has been requested in writing; and

(ii) based on current behavior or circumstances and all detention criteria must have been met as defined in (GAP) §97.41 of this title.

(C) A youth may appeal the admission decision to the IDP through the youth complaint system as defined in (GAP) §93.31 of this title (relating to Complaint Resolution System).

(3) Admission Criteria for Detention Beyond 72 Hours.

(A) A youth who is assigned to a TYC-operated institution or secure contract program may be detained in the IDP beyond 72 hours based on current behavior or circumstances, and all other criteria in paragraph (2) of this subsection have been met.

(B) A youth who is assigned to a placement other than a TYC-operated institution or secure contract program may be detained in a TYC-operated IDP beyond 72 hours based on current behavior or circumstances and all detention criteria in (GAP) §97.41 of this title have been met.

(4) A hearing will be scheduled as soon as practical but no later than seven (7) days, excluding weekends and holidays, from the date of the alleged violation.

(A) A due process hearing or trial is considered to be scheduled if a due process hearing date and time has been set or trial is pending.

(B) A youth whose due process hearing or trial has been held may be detained without a level IV hearing when the youth is waiting for transportation:

(i) to the Texas Department of Criminal Justice Institutional Division (TDCJ-ID) following a transfer hearing; or

(ii) to a different placement following a level I or II hearing.

(C) Transportation should be arranged immediately to take place within 72 hours and anything past that must have the superintendent's approval.

(e) Detention Hearings Required for Any Youth Held in an Institution Detention Program.

(1) A youth, who meets admission criteria, may be detained in an IDP for up to 72 hours.

(2) For extensions beyond 72 hours, an initial detention review hearing (level IV hearing) must be held on or before 72 hours from admission to the IDP, or the next working day.

(3) Subsequent detention review hearings must be held within ten (10) working days from the previous detention review hearing when a due process hearing or trial is not held and continued detention is necessary and appropriate based upon current behavior or circumstances that meet criteria. See (GAP) §95.59 of this title (relating to Level IV Hearing Procedure).

(4) A detention review hearing is not required for:

(A) youth under indictment pending trial pursuant to (GAP) §95.5 of this title (relating to Referral to Criminal Court);

(B) youth detained pending transportation as defined in this policy; or

(C) sentenced offenders awaiting a transfer hearing to TDCJ-ID as defined in (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders), if the hearing date is set to take place within a reasonable period of time from the date of detention.

(5) Institution or a designated community staff will hold the required level IV detention review hearings. The primary service worker (PSW) for youth not assigned to an institution will coordinate with institution staff to ensure that hearings are timely held or waived properly.

(6) If a level IV hearing is not timely held or is not properly waived, the youth shall be released from the IDP.

(7) The youth is notified in writing of his/her right to appeal the level IV hearing.

(f) Release from institution detention is determined by the outcome of a hearing or trial or upon the decision not to hold a hearing. If the youth is pending transportation, the youth is released from detention upon transport.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308093

Neil Nichols

Acting Executive Director

Texas Youth Commission

Effective date: December 14, 2003

Proposal publication date: October 24, 2003

For further information, please call: (512) 424-6301



## CHAPTER 99. GENERAL PROVISIONS

### SUBCHAPTER A. YOUTH RECORDS

#### 37 TAC §99.9

The Texas Youth Commission (TYC) adopts the repeal of §99.9, concerning Access to Youth Records, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9225).

The justification for the repeal is to implement a more efficient and thorough system for accessing youth records.

The repeal will allow for a substantially revised rule to be published.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308106

Neil Nichols

Acting Executive Director

Texas Youth Commission

Effective date: December 14, 2003

Proposal publication date: October 24, 2003

For further information, please call: (512) 424-6301



#### 37 TAC §99.9

The Texas Youth Commission (TYC) adopts new §99.9, concerning Access to Youth Information and Records, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9225).

The justification for the new rule is be in compliance with federal and state laws and regulations regarding access to youth's information and records.

The new rule will establish controls on access to youth records and information in compliance with federal and state laws and regulations, which limit access to all youth records and information.

Comments were received regarding the adoption of the new rule. Texas Workforce Commission (TWC) is concerned that the proposed change could possibly impact the contractual agreement between our agencies which allows them access to certain youth information.

TYC does have the standard confidentiality clause in our contract with TWC. Additionally, we are not releasing educational records to TWC under the contract. Should we ever want to provide to TWC educational records that are protected by FERPA, we would just have to get consent to do so from the youth, or parent or guardian if the youth is under 18, prior to providing the records. Under those facts, the new rule is authorized by law under Texas Human Resource Code §61.073 and Texas Family Code §58.005 to limit access to all youth information and records.

The new rule is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to deny youth, youth agents (other than attorney) access to youth information and records under the Texas Public Information Act.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308107



Neil Nichols  
Acting Executive Director  
Texas Youth Commission  
Effective date: December 14, 2003  
Proposal publication date: October 24, 2003  
For further information, please call: (512) 424-6301



### 37 TAC §99.11

The Texas Youth Commission (TYC) adopts an amendment to §99.11, concerning Youth Masterfile Records, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9227).

The justification for amending the section is the availability and implementation of accurate, current, and clear policies.

The amendment updates a reference to another rule which has been renamed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to establish rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308108  
Neil Nichols  
Acting Executive Director  
Texas Youth Commission  
Effective date: December 14, 2003  
Proposal publication date: October 24, 2003  
For further information, please call: (512) 424-6301



## SUBCHAPTER C. MISCELLANEOUS

### 37 TAC §99.51

The Texas Youth Commission (TYC) adopts an amendment to §99.51, concerning Death of a Youth, with changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9228). Changes to the proposed text consist of an updated reference to another rule which has been re-named.

The justification for amending the section is compliance with recently enacted legislation.

The amendment establishes a procedure whereby a report will be provided to the attorney general's office in the event of the death of a youth in a TYC residential program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted amendment implements the Human Resource Code, §61.034.

### §99.51. *Death of a Youth.*

(a) Purpose. The purpose of this rule is to establish a procedure whereby Texas Youth Commission (TYC) staff responds to the authorities and the family in the event of the death of a youth while under TYC jurisdiction.

(b) TYC staff will respond to the death of a youth in a responsible and sensitive manner.

(c) On the death of a youth residing in a TYC residential facility, the following actions will be taken.

(1) The following should be notified immediately:

- (A) local law enforcement officials;
- (B) program administrator/quality assurance administrator;
- (C) executive director or designee;
- (D) the youth's family; and
- (E) the chief inspector general.

(2) The agency will cooperate fully with any external investigation and conducts an internal investigation into the circumstances of the death. The investigation will be conducted in accordance with (GAP) §93.33 of this title (relating to Alleged Abuse, Neglect, and Exploitation), and the report finalized within 25 days of the date of the death of the youth.

(3) The executive director must provide the Attorney General's Office the Custodial Death Report (located [www.oag.state.tx.us](http://www.oag.state.tx.us)). The report must be filed:

- (A) regardless of the entity that conducts the investigation;
- (B) within 30 days from the date of the death of a youth in any TYC operated or contract residential program; and
- (C) with relevant facts surrounding the death.

(4) An autopsy will be sought by TYC staff who work with the medical examiner and the family as needed to arrange an autopsy;

(5) The youth's family is responsible for burial arrangements. If the family is unable or unwilling to assume such responsibility, TYC will ensure an appropriate burial.

(d) On the death of a youth residing in a home placement, the following actions will be taken.

(1) TYC staff must be immediately notified.

(2) An investigation by TYC will generally not be conducted unless the youth was under the supervision of a TYC residential program staff or contract staff at the time of death.

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 November 24, 2003.

TRD-200308114  
Neil Nichols  
Acting Executive Director  
Texas Youth Commission  
Effective date: December 14, 2003  
Proposal publication date: October 24, 2003  
For further information, please call: (512) 424-6301



### 37 TAC §99.90

The Texas Youth Commission (TYC) adopts an amendment to §99.90, concerning Vehicle Fleet Management, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9228).

The justification for amending the section is the implementation of policy that reflects current staffing levels at TYC's central office.

The amendment transfers the function of serving as chair of the Vehicle Utilization Board to the assistant deputy executive director for financial support. Several grammatical changes and terminology updates are also made.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to establish rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308109  
Neil Nichols  
Acting Executive Director  
Texas Youth Commission  
Effective date: December 14, 2003  
Proposal publication date: October 24, 2003  
For further information, please call: (512) 424-6301



## CHAPTER 111. CONTRACTING FOR SERVICES OTHER THAN YOUTH SERVICES

### 37 TAC §§111.1, 111.7, 111.17, 111.45

The Texas Youth Commission (TYC) adopts amendments to §111.1, concerning Contracting for Services; §111.7, concerning Professional and Consultant Contracts; §111.17, concerning Historically Underutilized Businesses (HUBs); and §111.45, concerning 1st Choice--Recycled Content Products without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9230).

The justification for amending the sections is the implementation of policy that is reflective of current staffing levels at TYC's central office.

The amendments assign several responsibilities formerly performed by other positions to the assistant deputy executive director for financial support.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted amendments implement the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308111  
Neil Nichols  
Acting Executive Director  
Texas Youth Commission  
Effective date: December 14, 2003  
Proposal publication date: October 24, 2003  
For further information, please call: (512) 424-6301



## CHAPTER 119. AGREEMENTS WITH OTHER AGENCIES

### 37 TAC §119.1, §119.5

The Texas Youth Commission (TYC) adopts the repeal of §119.1, concerning Coordinated Services for Multiproblem Children and Youth, and §119.5, concerning Service Contracts for Dysfunctional Families, without changes to the proposal text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9231).

The justification for the repeals is the availability of accurate, clear, and current TYC policies.

The repeals are necessary because the rules have been determined to be obsolete.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted repeals implement the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308113  
Neil Nichols  
Acting Executive Director  
Texas Youth Commission  
Effective date: December 14, 2003  
Proposal publication date: October 24, 2003  
For further information, please call: (512) 424-6301

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**TITLE 43. TRANSPORTATION**

**PART 1. TEXAS DEPARTMENT OF  
TRANSPORTATION**

**CHAPTER 4. EMPLOYMENT PRACTICES**

**SUBCHAPTER C. EMPLOYMENT AND  
EDUCATION PROGRAMS**

**43 TAC §4.21, §4.25**

The Texas Department of Transportation (department) adopts amendments to §4.21, definitions, and §4.25, concerning the conditional grant program. Sections 4.21 and 4.25 are adopted without changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8856) and will not be republished.

**EXPLANATION OF ADOPTED AMENDMENTS**

Education Code, Chapter 56, Subchapter I, requires the department to establish and administer a conditional grant program to provide financial assistance to economically disadvantaged eligible students who intend to work for the department immediately following their receipt of an eligible degree. Education Code §56.144 requires the department to promulgate rules for the selection and eligibility of applicants for grants.

The sections are amended to comply with changes to the conditional grant program by House Bill 3588 and Senate Bill 1876, 78th Legislature, Regular Session, 2003. These bills changed the eligibility of the program from minority and women students to economically disadvantaged students, and the types of professions eligible from those that have a significant statistical underrepresentation of minorities or women in the department's workforce to those which the department determines there is a critical need.

Section 4.21 is amended to revise the definition of "eligible professions" from those that have been identified by the department as having a significant statistical underrepresentation of minorities or women in the department's workforce to those professions in which the department determines there is a critical need. A definition of "economically disadvantaged student" has been added. An economically disadvantaged student is a student who is a member of a household with a family annual adjusted gross income of not more than 225% of the Federal Poverty Level. This federally set measure is an established guideline that will ensure fairness in determining who will be accepted into the program. The level of 225% was utilized to best accomplish the purpose of the program to assist economically disadvantaged students without restricting it to such an extent that there would be few applicants. The definition of "minority student," has been deleted.

Section 4.25 is amended throughout to remove the eligibility requirement that the student be a minority or female to the new requirement that the student be economically disadvantaged.

Subsection (a) is also amended to revise the purpose of the program from assisting students in professions that have a significant statistical underrepresentation of minorities or women in the department's workforce to those students in professions in which the department determines there is a critical need.

Subsection (c) is amended to state that evidence of household income will be required from a student in order to determine whether the student is economically disadvantaged. This subsection also provides that an applicant must be an economically disadvantaged student to be eligible.

Subsection (e) is added to provide additional criteria for selection. Whether the applicant is the first generation of the applicant's family to attend or graduate from an undergraduate program or from a graduate or professional program will be taken into consideration. After the applicants are ranked by academics, then applicants will be ranked giving highest priority to students with the greatest financial need in accordance with House Bill 3588 and Senate Bill 1976.

The commitment to work for the department as described in subsection (j) has been clarified to be consistent with statute and the other subsections of this section. The commitment is for a duration of two academic years instead of two calendar years.

**COMMENTS**

No comments were received on the proposed amendments.

**STATUTORY AUTHORITY:** The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Education Code, §§56.144-56.147, which require the department to promulgate rules for the selection and eligibility of applicants seeking to participate in the program.

**CROSS REFERENCE TO STATUTE:** Education Code, §§56.144-56.147.

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 November 25, 2003.

TRD-200308121  
Richard D. Monroe  
General Counsel  
Texas Department of Transportation  
Effective date: December 15, 2003  
Proposal publication date: October 10, 2003  
For further information, please call: (512) 463-8630

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**CHAPTER 17. VEHICLE TITLES AND  
REGISTRATION**  
**SUBCHAPTER B. MOTOR VEHICLE  
REGISTRATION**

**43 TAC §17.22**

The Texas Department of Transportation (department) adopts amendments to §17.22, concerning motor vehicle registration. The amendments are adopted without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7970) and will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS

The 78th Legislature, Regular Session, 2003, enacted House Bill 1997, which amended the Transportation Code by adding §502.2862, under which electric personal assistive mobility devices are not required to be registered before being operated on public highways.

The 78th Legislature, Regular Session, 2003, enacted House Bill 3588, Article 17, which amended Transportation Code, Chapter 501, by changing the names of salvage and nonrepairable motor vehicle certificates of title to salvage and nonrepairable vehicle titles.

The 78th Legislature, Regular Session, 2003, enacted House Bill 2971, which added new Transportation Code, §504.002(6). That provision clarified the department's authority to refuse to issue a license plate with an alphanumeric pattern that may offend one or more members of the public. In addition, House Bill 2971 recodified provisions governing specialty license plates from Transportation Code, Chapter 502, to Transportation Code, Chapter 504.

Section 17.22(a) and (b)(2)(A) are amended to reflect the terminology change from salvage and nonrepairable motor vehicle certificates of title to salvage and nonrepairable vehicle titles.

Section 17.22(c)(3)(B) is amended to provide specific examples of circumstances in which license plates will not be issued with particular alphanumeric patterns.

Section 17.22(d)(3) is amended to clarify the manner in which renewal notices are used when registration is renewed through the internet.

Section 17.22(d)(5)(E) is amended to reflect the recodification of specialty license plate provisions from Transportation Code, Chapter 502, to Transportation Code, Chapter 504.

Section §17.22(g) is added to clarify that electric personal assistive mobility devices are not required to be registered. Subsequent subsections have been renumbered accordingly.

#### COMMENTS

No comments were received on the proposed amendments.

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration.

#### CROSS REFERENCES TO STATUTE:

Transportation Code, §502.2862

Transportation Code, Chapter 501

Transportation Code, Chapter 504

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 November 25, 2003.

TRD-200308120

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: December 15, 2003

Proposal publication date: September 12, 2003

For further information, please call: (512) 463-8630



# 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 Commission on Environmental Quality

### Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 11, Contracts, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 11 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

#### CHAPTER SUMMARY

Chapter 11 stipulates how the commission will solicit, award, administer, and manage contracts. Subchapter A adopts by reference the rules in 1 TAC §§111.11 - 111.23 and §§111.26 - 111.28 that govern the use of the Historically Underutilized Business Program in awarding contracts. Subchapter B specifies the procedure a vendor would use to protest a commission action on a contract. Subchapter C adopts by reference the rules in 1 TAC §113.5(b) that govern bid opening and tabulation. Subchapter D specifies how the commission will handle Texas Government Code, Chapter 2260 contract claims against the agency asserted by a contractor. Subchapter E specifies contract monitoring roles and responsibilities. This rules review proposes to readopt the rules without any changes.

#### PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 11 continue to exist. The rules are needed to manage contracts according to the laws of Texas.

Subchapter A implements Texas Government Code, §2161.003, which requires state agencies to adopt by reference the Texas General Services Commission (now called the Texas Building and Procurement Commission) rules regarding historically underutilized business.

Subchapter B implements Texas Government Code, §2155.076, which requires state agencies to establish protest procedures.

Subchapter C implements Texas Government Code, §2156.005, which requires state agencies to adopt Texas General Services Commission (now called the Texas Building and Procurement Commission) rules regarding bid opening and tabulation.

Subchapter D implements Texas Government Code, Chapter 2260, by establishing a procedure for the administrative processing of contractor claims for breach of written contracts with the commission.

Subchapter E implements Texas Government Code, §2261.202 (renumbered from §2259.202) by clearly defining contract monitoring roles and responsibilities.

#### PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 11. Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-041-011-AD. Comments must be received in writing by 5:00 p.m., January 12, 2004. For further information or questions concerning this proposal, please contact Michael Bame, Policy and Regulations Division, at (512) 239- 5658.

TRD-200308225

Kevin McCalla

Director, General Law Division

Texas Commission on Environmental Quality

Filed: December 2, 2003



The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 118, Control of Air Pollution Episodes, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 118 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

#### CHAPTER SUMMARY

Chapter 118 specifies actions to be taken by the commission and regulated entities in preparation for, or in response to, an air pollution episode. An episode is the existence of a widespread condition of air pollution that creates an emergency requiring immediate action to protect human health or safety. One of these episodes would cover a geographical area, involve a combination of stagnating weather conditions and specified ambient levels of specified pollutants, and remain for at

least 12 hours. Under such conditions, the commission, with the governor's concurrence, would order any contributing source to reduce or discontinue the emission of air contaminants immediately.

Chapter 118 was first adopted on January 26, 1972, under provisions of the 1971 Texas Clean Air Act, the 1970 Federal Clean Air Act, and the content requirements for state implementation plans in the Code of Federal Regulations. Several improvements were made to the chapter in 1975, 1987, 1989, and 2000. In 1989, the chapter was revised to make its provisions consistent with new requirements published by the United States Environmental Protection Agency. In 2000, the chapter was revised to improve readability and to update references and citations as part of the commission's regulatory reform goals.

#### PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 118 continue to exist. The rules are necessary under current provisions of Texas Health and Safety Code, Texas Clean Air Act, §382.026, concerning Orders Issued Under Emergencies; and Texas Water Code, §5.514, concerning Orders Issued Under Air Emergency. In addition, Chapter 118 is the state's means of complying with the federal requirements of 40 Code of Federal Regulations Part 51, Subpart H, relating to Air Pollution Emergency Episodes; and is a part of the state implementation plan to attain the federal national ambient air quality standards for ozone under 40 Code of Federal Regulations §52.2270 which implements the Federal Clean Air Act, §110, concerning Implementation Plans.

#### PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 118. Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-007-118-AI. Comments must be received by 5:00 p.m., January 12, 2004. For further information or questions concerning this proposal, please contact Clifton Wise, Policy and Regulations Division, at (512) 239-2263.

TRD-200308208

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 2, 2003



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 F. License Regulations, §289.252.

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 rule continues 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 this rule 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-200308229

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: December 3, 2003



Texas Higher Education Coordinating Board

#### Title 19, Part 1

The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 8, concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts. This review is in accordance with the requirements of the Texas Government Code, Section 2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200308203

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: December 2, 2003



The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 9, concerning Program Development in Public Community/Junior College Districts and Technical Colleges. This review is in accordance with the requirements of the Texas Government Code, Section 2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200308204

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: December 2, 2003



The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 10, concerning Institutional Effectiveness in Public Community/Junior College Districts and Technical Colleges. This review is in accordance with the requirements of the Texas Government Code, Section 2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200308205

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: December 2, 2003

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The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 12, concerning Proprietary Schools. This review is in accordance with the requirements of the Texas Government Code, Section 2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200308206

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: December 2, 2003

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The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 13, concerning Financial Planning. This review is in accordance with the requirements of the Texas Government Code, Section 2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200308207

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: December 2, 2003

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# 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.

## Texas Cancer Council

Request for Applications

### Coalition Coordination and Support Program (FY 2004)

#### INTRODUCTION

The Texas Cancer Council (TCC) is soliciting applications from qualified individuals or entities to provide coordination and support services to the Texas Comprehensive Cancer Control Coalition (the Coalition). The Coalition serves as a forum for members to enhance all aspects of comprehensive cancer control in Texas and to implement priorities of the state cancer plan (*Texas Cancer Plan*).

The entity or individual(s) role in this contract will be to coordinate and support all activities of the Coalition including: organize meetings; expand Coalition membership; secure documentation of interorganizational linkages from Coalition members; create an Annual Report of Coalition member's activities toward implementing the Texas Cancer Plan; create a template for the Coalition's educational plan; support Coalition members regarding the Coalition public awareness campaign; and solicit community input into the 2005 Texas Cancer Plan by conducting community focus groups (town meetings).

Total reimbursement payments will not exceed \$89,560. This contract period is February 1, 2004 through June 29, 2004.

#### I. GENERAL INSTRUCTIONS

**One original and five copies** of the completed application should be mailed to: Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711; or hand-delivered to: Texas Cancer Council, 211 East 7th Street, Suite 710, Austin, Texas 78701.

**All applications must be received in the Council offices no later than 5:00 p.m., Monday, January 12, 2004.** Applications received after that time will not be accepted.

The applications will be reviewed by TCC staff and evaluated in accordance with the criteria specified. The contract will be awarded to the applicant whose application represents the best combination of qualifications and competence to conduct the program, along with a fair and reasonable budget justification.

Performance under a contract pursuant to this Request for Applications (RFA) will begin upon contract execution by both parties and will continue through June 29, 2004. The parties may renew or extend the contract if mutually agreed to in writing, for a second year, through June 29, 2005.

TCC reserves the right to modify or cancel this RFA, in whole or in part, prior to funding. Council staff will make every effort to provide notice of modification or cancellation to each organization to which this RFA was provided should that occur.

After awarding funds, the TCC reserves the right to revise, delete, or substitute work requirements, as it deems necessary for the success of the services to be provided. Any alterations shall be in writing, negotiated and executed by both parties.

All questions pertaining to this RFA may be directed to Mickey L. Jacobs, Executive Director, Texas Cancer Council (512) 463-3190.

#### II. SCOPE OF SERVICES

The contractor will be responsible for the following activities during the contract period:

The contractor shall:

\* Work with Coalition Chair, Executive Committee, and TCC staff to plan, organize and conduct 2 meetings of the full Coalition and 2 teleconferences of the Coalition Executive Committee. Prepare and disseminate meeting minutes and provide timely follow up on all necessary action items that result.

\* Work with Coalition members, TCC and local community leaders to plan, schedule, organize, arrange, publicize, facilitate, conduct, document, host, and solicit donated food and beverages for 8 - 10 town meetings around Texas, whose purpose is to secure community input into the Texas Cancer Plan.

\* Develop and disseminate a monthly e-newsletter of coalition activities

\* Work with the Coalition and TCC staff to create a template for the Coalition's educational plan, which will serve as an educational tool to inform state policy makers about the "state of the state" in cancer control.

\* Work with Coalition members to research and document coalition member's activities toward implementing the Texas Cancer Plan. Format this information into an Annual Report of the Coalition.

\* Work with TCC and Coalition members to craft one or more documents as templates for Coalition members' statement of intent to collaborate (aka interagency linkage document), and assist Coalition members to complete and submit the appropriate documents.

\* Maintain a current participant list of coalition members, and invite new members as directed by the Coalition.

\* Work closely with TCC staff. May telecommute, but must maintain regular, frequent contact with TCC staff, and seek guidance and direction from the Executive Director. Must be available to work at TCC offices up to twice weekly. Must be able to travel to selected sites to arrange and coordinate town meetings. Contractor may elect to budget for separate support staff to conduct administrative support as needed to fulfill the above.

#### III. CONTENTS OF APPLICATION

##### QUALIFICATIONS/COMPETENCIES OF APPLICANT

The application must describe:

\* the applicant's qualifications, skills, and ability to deliver the required services;

\* the applicant's experience in providing similar services;

\* the anticipated work plan and timeline for completing the above scope of work;



- \* the application must include examples of prior services performed by the applicant and a list of references and phone numbers; and
- \* the names and qualifications of any proposed subcontractors to provide the required services

Applicant qualifications:

The applicant should demonstrate:

- \* Significant organizational skills;
- \* The ability to work well within time constraints;
- \* The ability to prioritize activities, develop a time line, and stay on schedule;
- \* Strong computer skills (Word-processing and Powerpoint);
- \* 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; and
- \* Proven facilitator ability in coordinating work groups and advisory groups, and in facilitating activities.

TIME-TABLE

The anticipated time period for this contract is February 1, 2004 through June 29, 2004.

FUNDING AMOUNT AND BUDGET

The maximum amount of funding available for this contract is \$89,560.

A detailed budget must be provided which supports the proposed activities, corresponds to the scope of work described above and timetable, and contains the following information if applicable. The budget section must contain a written justification for the proposed expenses.

1. Salaries and fringe benefits: Specify the salary rates for each person working on the contract. For each position, list the salary and percent of time dedicated to the contract. List separately the fringe benefits rate and amount being paid for each person.
2. Travel costs: This includes all transportation, lodging, meals and related expenses related to the contract. Travel costs must be reimbursed on the basis of state-established mileage, and per diem.
3. Equipment: This includes the costs for a portable computer and projector for presentations. Equipment cost cannot exceed \$6,000 (contact TCC for specifications). Equipment must be itemized.
4. Supplies: This includes the costs of materials and consumable supplies necessary to carry out the contract (including equipment less than \$500).
5. Contractual: All costs for direct services rendered by a third party necessary to meet the objectives listed.
6. Other: All direct cost items not identified and explained in the above categories can be included, such as postage, printing, copying, etc.

Budget restrictions:

TCC contractors are paid on a reimbursement basis only. Advance payments are not allowed. Reimbursement may be claimed monthly.

A question and answer session will be held for all interested applicants on Friday, December 19, 2003, 9:00 am - 11:00 am at 211 East 7th Street, S-701, Austin, Texas 78701. All travel must be paid by the applicant.

**IV. ESSENTIALS**

SUBCONTRACTOR

The work shall be performed by the contracting party and will be completely and solely responsible for all contract services performed and must certify that it will perform the services.

TERMINATION OF CONTRACT

TCC may terminate the agreement for cause or for no cause in whole or in part. The Council may terminate the agreement at any time without penalty or recourse by giving written notice to the contractor at least 30 days before the effective date of the termination. In the event of termination, all documents, data, and reports prepared by the contractor under the contract shall be returned to TCC. Within 10 days after termination, the contractor will be entitled to receive just and equitable compensation for that work completed before the effective date of termination.

IDENTITY OF APPLICANT

The legal entity submitting a application should disclose its name; the mailing and street address, city and state of its principal or headquarters office, the telephone number of the person responsible for negotiating the terms of the contract.

PROHIBITED INTEREST AND CONFLICT OF INTEREST

No TCC member or employee may have a direct interest in the proceeds from a contract resulting from this RFA. No TCC member or employee may be related within the second degree of consanguinity or affinity to anyone who has a direct interest in the proceeds of a contract arising from this RFA. Applicant shall certify that it is in compliance with this provision to the best of its knowledge.

INDEMNIFICATION

The contractor shall indemnify, hold harmless and defend the TCC from any and all liability or loss, damage, or injury, including state or federal tax liabilities, arising out of or incident to the contractor's performance under any contract arising out of an accepted contract.

RESERVED RIGHTS

TCC reserves the right to reject any and all applications and re-solicit or cancel if that action is deemed in the best interest of the Council. The Council is not required to select the lowest priced application, but will take into consideration quality of application which represents the best combination of price and quality.

TRD-200308254  
 Mickey L. Jacobs, M.S.H.P.  
 Executive Director  
 Texas Cancer Council  
 Filed: December 3, 2003

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**Coastal Coordination Council**

**Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program**

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the

date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 21, 2003, through November 28, 2003. The public comment period for these projects will close at 5:00 p.m. on January 2, 2003.

#### FEDERAL AGENCY ACTIONS:

**Applicant:** Needmore Ranch, Ltd.; **Location:** The project is located on Corpus Christi Bay, approximately 10 miles southwest of Port Aransas, on the west side of Mustang Island approximately 1.5 miles southeast of Wilson's Cut in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Crane Islands NW, Texas. Approximate UTM Coordinates for the marina basin are (NAD 83): Zone 14; Easting: 680567; Northing: 3067982. **Project Description:** The applicant proposes to amend an existing permit. He is authorized to perform mechanical maintenance dredging in an existing marina basin and channel, and place dredged material on the upland area surrounding the marina. The applicant is also authorized to construct a breakwater, a 608-foot-long pier and T-head, fourteen boat slips, a boat ramp, and bulkheads where they do not exist.

The applicant requests authorization for an extension of time to perform dredging operations. Additionally, the applicant requests authorization to dredge the basin and channel hydraulically instead of mechanically.

In the marina, the applicant proposes to add a six-foot wide walkway that is parallel and adjacent to the north and south marina bulkheads from which the fourteen boat slips are authorized to extend. Additionally, the applicant proposes to cover the fourteen authorized slips, but not enclose them. The current permit allows the applicant to construct a boat ramp 30 feet north of the southeast corner of the marina. The applicant would like to relocate the boat ramp so that it is 50 feet north of the southeast corner of the marina.

Furthermore, the applicant is authorized to construct a sheet pile bulkhead south of the marina basin; however, he requests authorization to have the option of placing articulated concrete revetment on the south bulkhead in lieu of sheet piles. The base of the concrete revetment would be placed in the same position the sheet piles have been placed.

Last, the applicant proposes to reroute an existing road near the marina area so that it would follow a route that is approximately 200 feet east of its current alignment. The proposed realignment of the road would require fill material in approximately 2,100 square feet of the periphery of a wetland area.

CCC Project No.: 03-0379-F1; Type of Application: U.S.A.C.E. permit application #17580(04) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387).

**Applicant:** Bill Morgan; **Location:** The project is located on the shoreline of Corpus Christi Bay at the Holiday Inn - Emerald Beach, 1102 South Shoreline Boulevard, Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates: Zone 14; Easting: 658000; Northing: 3073700. **Project Description:** The applicant proposes to mechanically place fill material to nourish an eroded beach in order to restore pre-existing beach conditions of 140 feet wide by 600 feet long and a 10-year period to discharge clean river sand on the beach area as required to maintain the area at the authorized dimensions. The purpose of the project would be to enhance public use by hotel guests. Approximately 3,383 cubic yards of clean river sand would be deposited on the south end of the beach from the hotel parking lot by dump trucks. Trucks would stage on Morgan Street and city police would control traffic. Approximately 57,986 square feet of sandy bottom would be filled to raise the elevation of the

beach. A survey of the proposed fill area by the applicant's consultant found no wetlands, seagrasses, or oyster shell. The operation would require approximately 3 to 4 days to complete. Because the beach nourishment area is essentially confined on three sides (groin to the north, seawall to the west, breakwater to the south) and since the fill material is comprised of at least 95% coarse sand, no silt control measures are considered necessary by the applicant. A similar project for this site was previously authorized under Department of the Army Permit #12540 and subsequent amendments 01, 02, and 03. CCC Project No.: 03-0381-F1; Type of Application: U.S.A.C.E. permit application #23147 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387). NOTE: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**Applicant:** Davis Petroleum Corporation; **Location:** The project is located in Galveston Bay, in State Tract 100, approximately 10.7 miles east northeast of Seabrook, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 320787; Northing: 3276964. **Project Description:** The applicant proposes to install, operate, and maintain structures and equipment necessary for drilling and producing the State Tract 100 Well No.1. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. The applicant proposes to discharge 2,667 cubic yards of shell, gravel, or crushed rock to construct a 240-foot by 100-foot pad on which to moor a 167-foot by 54-foot marine drilling barge. The proposed flowline will be jetted and/or trenched to -3 feet below the mudline. A 70-foot by 70-foot production platform will be constructed if the well is productive. CCC Project No.: 03-0382-F1; Type of Application: U.S.A.C.E. permit application #23237 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387). NOTE: The consistency review for this project may be conducted by the Texas Railroad Commission as part of its certification under §401 of the Clean Water Act.

**Applicant:** Yuma E & P Company; **Location:** The project is located in Galveston Bay, in State Tracts 89 and 98, approximately 8.7 miles southeast of the City of Baytown, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 318763; Northing: 3279818. **Project Description:** The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pad, production structures with attendant facilities, and flowlines. The applicant proposes to discharge 1,493 cubic yards of shell material for a 210-foot by 64-foot shell pad. In addition, 6 temporary 3-pile clusters will be installed to moor the drilling barge. A 4-inch diameter flowline and walkway will be constructed between the State Tract 89 No. 1 Well and a 24-foot by 24-foot production platform. Finally, the applicant proposes to install, by jetting, a 6-inch diameter pipeline 1,740 feet to an existing platform located in State Tract 98. The pipeline will be placed at least 3 feet below the mudline. CCC Project No.: 03-0384-F1; Type of Application: U.S.A.C.E. permit application #23230 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387). NOTE: The consistency review for this project may be conducted by the Texas Railroad Commission as part of its certification under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited

to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or [diane.garcia@glo.state.tx.us](mailto:diane.garcia@glo.state.tx.us). Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200308258

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: December 3, 2003

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## Comptroller of Public Accounts

### Notice of Request for Information

Pursuant to Chapters 2305 and 403, Texas Government Code, the Office of the Comptroller of Public Accounts (Comptroller), on behalf of the State Energy Conservation Office (SECO) Renewable Energy Demonstration Program (REDP), issues this Request for Information (RFI #167c) from interested political subdivisions to participate in the Renewable Energy at Work Project (Project). SECO requests information from the foregoing entities that are interested in working with SECO to pilot the Project, which may include installation of a certified renewable energy system and technology and implementation of an educational outreach effort to the community.

Contact: Entities interested in submitting information in response to this RFI should contact Pam Groce, State Energy Conservation Office, Comptroller of Public Accounts, 111 E. 17th St., Room 1114, Austin, Texas, 78774, telephone number: (512) 463-1931, no later than 5:00 p.m. Central Zone Time (CZT), on or before Monday, December 22, 2003. All written inquiries and questions must be received at the location specified above, prior to 5:00 p.m. (CZT) on the deadline set forth above in order to be considered.

Responses: Comptroller and SECO reserve the right, in their sole judgment and discretion, to accept or reject any or all responses received. Responses received by the deadline will be subject to evaluation by Comptroller, SECO, and/or a committee and all responses shall become the property of SECO and Comptroller. Responses will be public information and available to any requester. Neither Comptroller nor SECO is under any legal or other obligation to issue any solicitation or execute a contract or make any selection or award on the basis of this notice or any responses received as a result of the issuance of this RFI. Neither SECO nor Comptroller shall pay for any costs incurred by any political subdivision or any other entity in responding to this RFI.

Closing Date: All responses to this RFI must be submitted to the address set forth above no later than 5:00 p.m. (CZT), on Friday, January 30, 2004. Respondents are solely responsible for ensuring timely receipt of all responses at the location set forth above on or before the deadline. Late responses received after this time and date will not be considered. All responses must be submitted in the format designed and provided by SECO. The RFI format is located on the SECO website - [http://www.seco.cpa.state.tx.us/seco\\_rfi.htm](http://www.seco.cpa.state.tx.us/seco_rfi.htm) or can be requested by telephone (800) 531-5441, EXT. 3-1931. Respondents must complete and submit all of the following in response to this RFI:

\* Submit the completed application form (available on the above-referenced website or on request);

\* Designate additional funding or cost-share source and amounts, if any;

\* Complete a pre-survey (prior to installation) and a post-survey (following installation and staff training) to determine the effects of the program on renewable energy awareness;

\* Designate a project manager at the facility who will be responsible for all updates and fulfilling obligations as a partner to the program; and

\* Organize a dedication ceremony and public outreach activities after the installation.

TRD-200308234

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: December 3, 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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 12/08/03 - 12/14/03 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 12/08/03 - 12/14/03 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-200308202

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 2, 2003

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## Texas Department of Criminal Justice

### Notice of Bid Cancellation

The Texas Department of Criminal Justice publishes this notice of cancellation for Request for Proposal 696-FD-4-P001 Electric Pulse Fence Technology Fence System at the Wynne Unit in Huntsville, Texas.

Notice of an Invitation for Bid was published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9940). TDCJ will issue another Request for Proposal for this project in the future.

TRD-200308237

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: December 3, 2003

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## Texas Council for Developmental Disabilities

### Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) is requesting proposals from qualified individuals or entities to conduct focus groups, gather available information from surveys being conducted by disability advocacy organizations, and interview people with disabilities regarding their service and support needs.

The Biennial Disability Report, a joint report of TCDD and the Texas Office for Prevention of Developmental Disabilities (TOPDD) on the state of services to individuals with disabilities, was mandated by Senate Bill 374 (76th Legislature) in 1999. Additionally, TCDD entered into a Memorandum of Understanding with the Texas Department of Housing and Community Affairs (TDHCA) in 2003 to collaborate on the development of a report that addresses the availability of integrated, affordable, and accessible housing for people with developmental disabilities. This procurement is requested to provide TCDD with qualitative and quantitative data to be used in the development of the 2004 Biennial Disability Report and to provide TDHCA with qualitative data to be used in a statewide study of the housing needs of Texans with disabilities. The focus groups and interviews will provide an understanding of the state of housing services by including both quantitative, objective data and personal stories of individuals with disabilities about their needs and resources. Summaries of all focus groups and interviews must be completed by April 16, 2004.

Additional information concerning this request for proposal may be obtained through TCDD's website at: <http://www.txddc.state.tx.us>. All questions pertaining to this Request for Proposals should be directed to Joanna Cordry, Project Development Director, Texas Council for Developmental Disabilities, (512) 437-5410; or e-mailed to [Joanna.Cordry@txddc.state.tx.us](mailto:Joanna.Cordry@txddc.state.tx.us).

**Deadline:** One electronic proposal and one hard copy with the original signatures should be submitted. Faxed proposals cannot be accepted. Electronic copies must be received by TCDD at [Carl.Risinger@txddc.state.tx.us](mailto:Carl.Risinger@txddc.state.tx.us) by 5:00 PM central standard time on January 16, 2004.

A hard copy with original signatures must be received at TCDD's physical office at 6201 East Oltorf, Suite 600, Austin, Texas, not later than 5:00 PM on January 16, 2004, or mailed to TCDD, 6201 East Oltorf, Suite 600, Austin, Texas 78741-7509, and postmarked prior to midnight, January 16, 2004.

**Proposals will not be accepted after the due date.**

TRD-200308259

Roger A. Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: December 3, 2003

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**Texas Education Agency**

**Request for Applications Concerning the Texas Head Start-Ready to Read Educational Component Grant**

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-04-008 from Head Start organizations or other similar government-funded early childhood care and education programs. A Head Start Program is defined as the federal program established under the Head Start Act, 42 United States Code, 9831 et. seq., and its subsequent amendments. Eligible applicants include public school districts; open-enrollment charter schools; education service centers serving as fiscal agents; universities; colleges; and non-profit and for-profit organizations that currently operate a government-funded Head Start or similar early

childhood care and education program. Applicants must serve at least 75% low-income children.

**Description.** The goals of this program include: (1) providing an enhanced educational component to the existing Head Start or similar government-funded early childhood care and education program so that every child completing the program is prepared to enter school ready to learn; (2) promoting readiness for kindergarten by providing a significant literacy and language development component to existing early education and childcare programs; and (3) identifying cost-effective models for pre-reading intervention. The Texas Head Start - Ready to Read Educational Component Grant is a pre-school extension of the Texas Reading Initiative.

**Dates of Project.** The Texas Head Start - Ready to Read Educational Component Grant will be implemented during the spring of 2004 and the 2004-2005 school year. Applicants should plan for a starting date of no earlier than March 15, 2004, and an ending date of no later than August 31, 2005.

**Project Amount.** A total of approximately \$7.5 million is available for the first year funding of approximately ten sites during the spring of 2004 and the 2004-2005 school year. A grant award must be a minimum of \$350,000 per year. The grant request per applicant may not exceed \$500,000. Grants may be awarded in two or more consecutive grant periods to a Head Start applicant provided the monies are used to expand the grant programs to additional facilities that did not receive Texas Head Start - Ready to Read grant funds in the 2002-2003 grant cycle. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the commissioner of education and the state legislature.

**Selection Criteria.** Applications will be selected based on the independent reviewers' 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 programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The grant requires early education programs to provide scientific, research-based, pre-reading instruction so that every child completing the program is prepared to enter school ready to learn. Special consideration will be given to applicants who partner with an institution of higher education. TEA will not award a grant to an application receiving an average score below 70. The TEA reserves 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.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of RFA #701-04-008 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](mailto: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 Gina S. Day, Division of Discretionary Grants, Texas Education Agency, at (512) 463-9269.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, January 22, 2004, to be considered for funding.

TRD-200308232

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: December 3, 2003

## Texas Commission on Environmental Quality

### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 12, 2004**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 12, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Battery Conservation Technologies, Inc.; DOCKET NUMBER: 2003-0188-IHW- E; TCEQ ID NUMBER: 52085; LOCATION: 2001 Western Avenue, Pecos, Reeves County, Texas; TYPE OF FACILITY: battery reclamation business; RULES VIOLATED: TCEQ Permit Number HW- 50352, Provision Number III.B.7, by failing to submit an annual facility activity report, as required by its permit; TCEQ Permit Number HW-50352, Provision Number IV.A.1.b, by exceeding the maximum permitted amount of 84 tons of batteries stored in the container storage area; 30 TAC §§335.2, 335.17(a)(8), and 335.43, 40 Code of Federal Regulations (CFR) §270.1, and TCEQ Permit Number HW-50352, Provision Number II.B, by storing hazardous waste in unpermitted units; TCEQ Agreed Order Docket Number 1998-1177-IHW-E, Provision Number IV.1, by failing to pay administrative penalties; 30 TAC §37.404, TCEQ Permit Number HW-50352, Provision Number IV.B.6, and 40 CFR §264.147,

by failing to demonstrate financial assurance for liability coverage; 30 TAC §37.201, TCEQ Permit Number HW-50352, Provision Number IV.A.1, and 40 CFR §264.143, by failing to make the annual payments into the financial assurance trust account for closure; and 30 TAC §335.323 and §335.324, by failing to pay required hazardous waste generation and facility fees; PENALTY: \$45,375; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239- 0939; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(2) COMPANY: Claude Conner dba Conner Texaco Service Station; DOCKET NUMBER: 2002- 0548-PST-E; TCEQ ID NUMBERS: 40735 and 43701; LOCATIONS: 1220 Fannin and 3102 Magnolia, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §334.21, by failing to pay outstanding petroleum storage tank fees; PENALTY: \$2,500; STAFF ATTORNEY: David Green, Litigation Division, MC 175, (512) 239-5917; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: DMV Stainless USA, Inc.; DOCKET NUMBER: 2002-1077-AIR-E; TCEQ ID NUMBER: HG-3179-U; LOCATION: 12050 West Little York Road, Houston, Harris County, Texas; TYPE OF FACILITY: stainless steel pipe production plant; RULES VIOLATED: 30 TAC §122.146(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an annual compliance certification within 30 days after the end of the certification period; and 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit a semiannual deviation report; PENALTY: \$2,650; STAFF ATTORNEY: Robert Hernandez, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: RFK Enterprises Inc., dba Food Spot #5; DOCKET NUMBER: 2002-1121-PST-E; TCEQ ID NUMBER: 0044519; LOCATION: 234 South Main, Vidor, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(5) and (7) and THSC, §382.085(b), by failing to maintain the results of testing conducted at the station and to maintain all vapor recovery records; 30 TAC §115.245(3) and THSC, §382.085(b), by failing to successfully perform five-year testing to verify proper operation of the stage II system; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the vapor recovery system free from any defects that would substantially impair the system in reducing refueling vapors; PENALTY: \$11,050; STAFF ATTORNEY: Robert Hernandez, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200308220

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 2, 2003

### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section

7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 12, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 12, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Battery Reclamation, Inc.; DOCKET NUMBER: 2003-0189-IHW-E; TCEQ ID NUMBERS: 52085 and HW-50352; LOCATIONS: 2001 Western Avenue and 7 County Road 202, Pecos, Reeves County, Texas; TYPE OF FACILITY: battery reclamation business and universal waste handling; RULES VIOLATED: 30 TAC §335.2(a) and §335.43(a), and 40 Code of Federal Regulations (CFR) §270.1(c), by failing to obtain a permit to store and process hazardous waste batteries; 30 TAC §335.261 and 40 CFR §273.35(a), by allowing the storage of universal waste batteries on-site for over one year; and 30 TAC §335.2 and §335.43, by failing to obtain a permit to store hazardous waste from battery processing operations, including containers of liquid potassium hydroxide, zinc manganese material, and non-ferrous material; PENALTY: \$35,150; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(2) COMPANY: Bayou Club of Houston; DOCKET NUMBER: 2002-1264-MWD-E; TCEQ ID NUMBER: 12233-001; LOCATION: 8550 Memorial Drive, Houston, Harris County, Texas; TYPE OF FACILITY: private club with a wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121, and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12233-001, Effluent Limitations and Monitoring Requirements, by exceeding the permitted effluent limits; 30 TAC §319.1, by failing to report the correct number of total suspended solid single grab exceedences; 30 TAC §305.125(1) and (9), and TPDES Permit Number 12233-001, Monitoring and Reporting Requirement Number 7.c., by failing to provide noncompliance notifications for permit exceedences greater than 40% of the total suspended solids and carbonaceous biochemical oxygen demand daily average limits; and 30 TAC §305.125(1) and (5), and TPDES Permit Number 12233-001, Operational Requirement Number 1, by failing to adequately operate and maintain the facility; PENALTY: \$10,530; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Calvin Pareo dba Pareo Dairy; DOCKET NUMBER: 2001-0412-AGR-E; TCEQ ID NUMBER: 04146-000; LOCATION:

north side of County Road 1476, 3-1/2 miles from the intersection of County Road 1476 and U. S. Highway 67 near Dublin, Comanche County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: 30 TAC §321.31(a), TWC, §26.121(a), and TCEQ Water Quality Permit Number 04146, General Condition 5, by failing to prevent wastewater from entering waters in the state; and 30 TAC §321.40(11) and TCEQ Water Quality Permit Number 04146, Special Provision F(1), by failing to properly dispose of dead animals; PENALTY: \$4,000; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Cedron Creek Ranch Association dba Cedron Creek Ranch Water Supply; DOCKET NUMBER: 2002-1359-PWS-E; TCEQ ID NUMBER: 0180051; LOCATION: 1/4-mile north of Farm-to-Market Road 1713 on County Road 1401 north of Whitney, Bosque County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(iv), and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(n)(2), by failing to have an accurate and up-to-date map of the distribution system available so that valves and mains can be easily located during emergencies; 30 TAC §290.41(c)(3)(B), by failing to provide a casing that extends a minimum of one inch above the pump motor foundation block; and 30 TAC §290.109(c)(1), by failing to collect monthly bacteriological water analysis samples at locations throughout the distribution system as represented on the system's monitoring plan; PENALTY: \$1,600; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Duke Energy Field Services, L.P.; DOCKET NUMBER: 2001-1336-AIR-E; TCEQ ID NUMBER: JE-0200-H; LOCATION: 28531 State Highway 124, Winnie, Jefferson County, Texas; TYPE OF FACILITY: compressor station; RULES VIOLATED: 30 TAC §106.352(1) and §106.512(2)(C)(i) and (ii), and THSC, §382.085(b), by failing to replace, in a timely manner, the oxygen sensors for the engines on a quarterly basis; 30 TAC §111.205 and THSC, §382.085(b), by failing to provide notification to the TCEQ concerning fire training on an annual basis; 30 TAC §§122.121, 122.130(a), 122.133(1), 122.143(4), and 122.511(b)(1) and (2), and THSC, §382.054 and §382.085(b), by failing to submit an abbreviated Title V application to the TCEQ and continuing to operate the station; 30 TAC §§122.143(4), 122.145(2)(A) - (C), 122.146(2) and (5)(D), and 122.511(b), and THSC, §382.085(b), by failing to submit the annual compliance certification within 30 days after the end of the certification period; and 30 TAC §§106.352(1), 106.512(2)(C)(iii), and 122.145(1)(A), and THSC, §382.085(b), by failing to submit documentation within 60 days of initial startup and biennially prior to October 31, 2001, for emissions of nitrogen oxide and carbon monoxide, measured in accordance with United States Environmental Protection Agency Reference Method; PENALTY: \$24,000; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Duke Energy Field Services, LP; DOCKET NUMBER: 2003-0199-AIR-E; TCEQ ID NUMBER: MF-0012-R; LOCATION: two miles west of the intersection of Farm-to-Market Road 829 and County Road 3300 on County Road 3300, Tarzan, Martin County, Texas; TYPE OF FACILITY: natural gas compression and transmission station; RULES VIOLATED: 30 TAC §122.146(2), THSC, §382.085(b), and TCEQ Permit Number MF0012R, by failing

to submit, in a timely manner, the annual Title V Compliance Certification; 30 TAC §101.201(a)(1)(B), THSC, §382.085(b), and TCEQ Permit Number MF0012R, by failing to notify the TCEQ of upset events within 24 hours of their occurrence; and THSC, §382.085(a) and TCEQ Permit Number MF0012R, by failing to obtain regulatory authority to emit 6,112 pounds of propane and 13,285 pounds of natural gas; PENALTY: \$12,500; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(7) COMPANY: EnviroClean Management Services, Inc.; DOCKET NUMBER: 2002-0284-MSW- E; TCEQ ID NUMBER: 2245; LOCATIONS: corner of Rylie Crest and Haymarket, Balch Springs and 2821 Industrial Lane, Garland, Dallas County, Texas; TYPE OF FACILITY: medical waste storage, medical waste transporter, and processing operation; RULES VIOLATED: 30 TAC §330.4 and §330.1009(c), by failing to obtain a permit for the storage of medical waste; 30 TAC §330.113(b)(10) and §330.1005(l) and (m), by failing to provide the required documents, manifests, trip tickets, and proof of disposition of special wastes; 30 TAC §330.1005(g)(2)(A), by failing to maintain the cargo compartment of medical waste transportation vehicles in a sanitary condition; 30 TAC §330.1005(b)(3), by failing to notify the TCEQ of all vehicles used for the transportation of medical waste; 30 TAC §330.1005(g)(1)(D), by failing to properly provide identification markings on all vehicles used for the transportation of medical waste; 30 TAC §330.1005(n), by accepting medical waste at an unauthorized facility; 30 TAC §330.5 and §330.152(c), and Municipal Solid Waste Permit Number 2245, Section III, Facility Design, Construction and Operation, C and D, by failing to properly collect and dispose of disinfecting wash waters by allowing the wash waters to migrate to surrounding surface soils; and 30 TAC §§330.150, 330.111, and 330.1005(o), by failing to conduct operations as set forth in the facility's standard operating procedures; PENALTY: \$25,000; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Mohammad Salman dba Stop N Drive; DOCKET NUMBER: 2003-0345-PST-E; TCEQ ID NUMBER: 0014581;

LOCATION: 23860 Farm-to-Market Road 1314, Porter, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); PENALTY: \$2,100; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(9) COMPANY: Mohammed Husainat dba Shaw Gas Mart; DOCKET NUMBER: 2000-1264-PST- E; TCEQ ID NUMBER: 40110; LOCATION: 2901 Highway 3, Dickinson, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1), and TWC, §26.3475(a) and (c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances; failing to conduct annual performance testing on the line leak detectors; failing to conduct effective inventory control procedures in conjunction with the automatic tank gauging system; and failing to conduct annual tightness testing for all pressurized piping within the UST system; and 30 TAC §334.21, by failing to pay the required outstanding annual facility fees; PENALTY: \$11,250; STAFF ATTORNEY: Robert Hernandez, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200308221  
Paul C. Sarahan  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: December 2, 2003

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**Texas Department of Health**

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

**NEW LICENSES ISSUED:**

Location	Name	License #	City	Amend-ment #	Date of Action
La Porte	Invista Inc	L05719	La Porte	00	11/26/03
Throughout Tx	Blaine T Williams Consulting Services	L05732	Dripping Springs	00	11/18/03
Throughout Tx	Industrial Resolution Imaging Services Inc	L05730	Pearland	00	11/18/03

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Abilene Cardiology Consultants PA	L04315	Abilene	27	11/20/03
Alvin	AMOCO Chemical Company Chocolate Bayou Plant	L01422	Alvin	57	11/13/03
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	32	11/24/03
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	09	11/19/03
Austin	Seton Medical Center Risk Management Dept	L02896	Austin	73	11/24/03
Big Springs	Big Springs Hospital Corporation	L00763	Big Springs	43	11/20/03
Bishop	Ticona Polymers Inc	L02441	Bishop	40	11/25/03
Center	Tenet Healthcare Inc	L03608	Center	27	11/14/03
Cleveland	Cleveland Regional Medical Center LP	L02055	Cleveland	29	11/20/03
College Station	College Station Hospital LP	L02559	College Station	52	11/17/03
College Station	College Station Hospital LP	L02559	College Station	53	11/21/03
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	32	11/18/03
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	29	11/21/03
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	33	11/26/03
Dallas	PET NET Pharmaceuticals Inc	L05193	Dallas	16	11/17/03
Decatur	Wise Regional Health System	L02382	Decatur	19	11/11/03
El Paso	El Paso Healthcare System LTD	L02551	El Paso	41	11/17/03
El Paso	El Paso Cardiology Associates PA	L05162	El Paso	02	11/18/03
El Paso	Tenet Hospitals Limited	L02365	El Paso	49	11/24/03
El Paso	R E Thomason General Hospital	L00502	El Paso	55	11/25/03
Fort Worth	Tarrant Diagnostic Imaging LLC	L05655	Fort Worth	01	11/17/03
Fort Worth	Radiology Associates	L03953	Fort Worth	30	11/21/03
Houston	The Methodist Hospital	L00457	Houston	118	11/17/03
Houston	Valentina Ugolini MD	L05093	Houston	11	11/18/03
Houston	Texas Nuclear Imaging Inc	L05009	Houston	21	11/19/03
Houston	Park Plaza Hospital	L02071	Houston	45	11/19/03
Houston	Houston Northwest Medical Center	L02253	Houston	59	11/19/03
Houston	Texas Childrens Hospital Diagnostic Imaging 2-2521	L04612	Houston	31	11/20/03
Houston	Columbia Hospital Corporation of Houston	L02038	Houston	38	11/24/03
Houston	Texas Nuclear Imaging Inc	L05009	Houston	22	11/25/03
Houston	Lyondell-CITGO Refining LP	L00187	Houston	54	11/25/03
Houston	RAM Testing Inc	L05663	Houston	01	11/21/03



CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	The PET Scan Center	L05411	Houston	05	11/24/03
Houston	Saint-Gobain Ceramics and Plastics	L04895	Houston	05	11/26/03
Jacksonville	Regional Health Care Center	L05362	Jacksonville	13	11/21/03
Lone Star	Lone Star Steel Company	L05055	Lone Star	02	11/18/03
Missouri City	Fort Bend Hospital Inc	L03457	Missouri City	23	11/14/03
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	16	11/17/03
Plano	Presbyterian Hospital of Plano	L04467	Plano	27	11/14/03
Port Lavaca	Union Carbide Corporation a Subsidiary of the Dow Chemical Company Seadrift Operations	L00051	Port Lavaca	77	11/26/03
San Antonio	VHS San Antonio Partners LP	L00455	San Antonio	126	11/17/23
San Antonio	Martin Marietta Materials Southwest Inc	L04768	San Antonio	05	11/25/03
Throughout Tx	Gulf Coast Weld SPEC	L05426	Beaumont	26	11/26/03
Throughout Tx	Rogers Engineering Services	L03733	Brenham	13	11/26/03
Throughout Tx	Terra-Mar	L03157	Fort Worth	38	11/17/03
Throughout Tx	Aviles Engineering Corporation	L03016	Houston	14	11/18/03
Throughout Tx	Halliburton Energy Services Inc	L00442	Houston	102	11/25/03
Throughout Tx	Halliburton Energy Services Inc	L03284	Houston	26	11/25/03
Throughout Tx	E I Dupont De Nemours & CO	L00005	Orange	65	11/26/03
Throughout Tx	Gulf Coast Weld SPEC	L05426	Orange	25	11/25/03
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	32	11/18/03
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	33	11/19/03
Throughout Tx	CONAM Inspection & Engineering Inc	L05010	Pasadena	64	11/25/03
Tyler	Nutech Inc	L04274	Tyler	44	11/18/03
Tyler	Physician Reliance Network Inc	L04788	Tyler	03	11/25/03
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	91	11/14/03

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Southern Ecology Management Inc	L04711	Corpus Christi	05	11/25/03

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Deer Park	SGS Control Services Inc	L02901	Deer Park		11/25/03

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 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200308235  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: December 3, 2003



**Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Methodist Healthcare System of San Antonio, dba Southwest Texas Methodist Hospital**

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 Methodist Healthcare System of San Antonio, doing business as Southwest Texas Methodist Hospital (licensee-L00594) of San Antonio. A total penalty of \$5,000 is proposed to be assessed the licensee for alleged violations of 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-200308200  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: December 2, 2003



**Texas Health and Human Services Commission**

**Public Notice Statement**

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 03-30, Amendment Number 665, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. Amendment Number 665 provides for a supplemental payment for state government owned or operated hospitals for inpatient and outpatient services. The supplemental payment shall not

exceed the difference between total annual Medicaid payments and the federal upper payment limits established in 42 CFR 447.272. The purpose of the supplemental payment is to recognize the unique role these facilities play in the Texas healthcare delivery system for the Medicaid population. As a result, the State seeks to ensure that Medicaid payments are commensurate with Medicare payments and/or payment principles.

The proposed amendment is to be effective on December 13, 2003. The proposed amendment is estimated to result in increased expenditures of approximately \$32,148,711 for fiscal year 2004, and \$38,578,453 for fiscal year 2005.

Copies of the proposed change in methodology will be available for public review at local offices of the Texas Department of Human Services.

Comments, questions or requests for additional information should be forwarded to Scott Reasonover, Texas Health and Human Services Commission, 1100 West 49th Street, Austin, Texas 78756, (512) 491-1348.

TRD-200308201  
Steve Aragon  
General Counsel  
Texas Health and Human Services Commission  
Filed: December 2, 2003



**Texas Department of Insurance**

**Amended Notice of Public Hearing**

Notice of hearing for Docket No. 2582 was previously published in the "In Addition" section of the December 5, 2003 issue of the *Texas Register*. The following is a corrected version of the notice of hearing.

The Commissioner of Insurance will hold a public hearing under Docket No. 2582, on December 19 2003, at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider one appointment to the Building Code Advisory Committee on Specifications and Maintenance (Committee). The appointment of a replacement insurance industry representative is necessary to complete the remainder of the unexpired term of Robert C. Huxel.

The Commissioner is considering the appointment of James Killian of Farmers Insurance Company as an insurance industry representative to the Committee.

If appointed, Mr. Killian would serve a term beginning on the date appointed by the Commissioner and expiring on September 1, 2005. Article 21.49 §6C of the Insurance Code provides for the appointment of an advisory committee to advise and make recommendations to the Commissioner on building specifications and maintenance in the plan of operation of the Texas Windstorm Insurance Association (TWIA). Article 21.49 §6C also provides for the membership of the Committee, including public members who reside in a designated catastrophe area, three building industry members who reside in a designated catastrophe area, and three members representing the insurance industry who write insurance in the designated catastrophe areas.

The hearing is held pursuant to the Insurance Code, Article 21.49 §5A, which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Catastrophe Property Insurance Pool Act), including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear and testify for or against the proposed appointments.

TRD-200308199

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: December 1, 2003



#### Company Licensing

Application for admission to the State of Texas by BNM INDEMNITY COMPANY, a foreign fire and/or casualty company. The home office is in Morristown, New Jersey.

Application for admission to the State of Texas by MJR FIRE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Morristown, New Jersey.

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-200308255

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: December 3, 2003

## ◆ ◆ ◆ Texas Lottery Commission

### Instant Game No. 436 "Casino Action"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 436 is "CASINO ACTION". The play style in POKER is "key symbol match with legend". The play style in DOUBLE DOWN is "match up with doubler". The play style in SUPER SLOTS is "match up". The play style in 7-11-21 is "add up with doubler". The play style in LUCKY 7'S is "key symbol match". The play style in BONUS is "key symbol match". The play style in LUCKY NUMBERS is "key number match".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 436 shall be \$20.00 per ticket.

#### 1.2 Definitions in Instant Game No. 436.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, J CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, 3 CARD SYMBOL, 2 CARD SYMBOL, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$80.00, \$100, \$200, \$400, \$1,000, \$2,000, \$4,000, \$10,000, \$100,000, SONEMILL SYMBOL, HORSESHOE SYMBOL, CHERRY SYMBOL, GRAPE SYMBOL, DIAMOND SYMBOL, SONE MILL, STAR SYMBOL, BANANA SYMBOL, BELL SYMBOL, BAR SYMBOL, MELON SYMBOL, POT OF GOLD SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, TRY AGAIN SYMBOL, NO BONUS SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appear under the appropriate Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 436 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
A CARD SYMBOL	
Q CARD SYMBOL	
J CARD SYMBOL	
10 CARD SYMBOL	
9 CARD SYMBOL	
8 CARD SYMBOL	
7 CARD SYMBOL	
6 CARD SYMBOL	
5 CARD SYMBOL	
4 CARD SYMBOL	
3 CARD SYMBOL	
2 CARD SYMBOL	
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$80.00	EIGHTY
\$100	ONE HUND
\$200	TWO HUND
\$400	FOR HUND
\$1,000	ONE THOU
\$2,000	TWO THOU
\$4,000	FOR THOU
\$10,000	10 THOU
\$100,000	100 THOU
\$ONE MILL	ONE MIL
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN

17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
HORSESHOE SYMBOL	HSH
CHERRY SYMBOL	CHR
GRAPE SYMBOL	GRP
DIAMOND SYMBOL	DMD
STAR SYMBOL	STR
BANANA SYMBOL	BNA
BELL SYMBOL	BEL
BAR SYMBOL	BAR
MELON SYMBOL	MEL
POT OF GOLD SYMBOL	GLD
TRY AGAIN SYMBOL	TRY AGAIN
NO BONUS SYMBOL	NO BONUS
SORRY SYMBOL	SORRY

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 436 - 1.2E

CODE	PRIZE
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$20.00.

H. Mid-Tier Prize - A prize of \$40.00, \$80.00, \$100, \$200, or \$400.

I. High-Tier Prize - A prize of \$1,000, \$2,000, \$4,000, \$10,000, \$100,000 or \$1,000,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (436), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 436-0000001-000.

L. Pack - A pack of "CASINO ACTION" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate from pack to pack. Fanfold A: ticket front 000 will be on the top and ticket back 074 will be on the last page. Fanfold B: ticket back 000 will be on the top and ticket front 074 will be on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASINO ACTION" Instant Game No. 436 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASINO ACTION" Instant Game is determined once the latex on the ticket is scratched off to expose 79 (seventy-nine) play symbols. In GAME 1: POKER, if the player matches a play symbol designated as a HAND listed in the prize legend, PRIZE GRID, in the POKER play area, the player will win the prize corresponding to the legend for that HAND. Only the greater prize amount listed in the prize legend which corresponds to the HAND will be the prize indicated. In GAME 2: DOUBLE DOWN, if the player matches three (3) identical play symbol amounts, the player will win that prize indicated. If the player matches four (4) identical play symbol amounts, the player will win double the prize indicated. In GAME 3: SUPER SLOTS, if the player matches three (3) identical play symbols in the same row horizontally, the player will win the prize indicated. In GAME 4: 7-11-21, the player adds up all of the play symbol, YOUR DICE, in a row and the total equals 7 or 11 in the same row horizontally, the player will win the prize indicated for that roll. If the play symbol, YOUR DICE, in a row horizontally, equals 21 in the same roll, the player will win double the prize indicated for that roll. In GAME 5: LUCKY 7'S, if the player reveals a play symbol number "7" in any play spot, the player will win the prize indicated. In GAME 6: BONUS, if the player reveals a play symbol prize amount, the player will win the prize indicated. In GAME 7: LUCKY NUMBERS, if the player matches the YOUR NUMBERS play symbol to the LUCKY NUMBER designated key play symbol, the player will win the prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 79 (seventy-nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 79 (seventy-nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 79 (seventy-nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 79 (seventy-nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will never be the same as the winning prize symbol(s) within the same game (when applicable).

C. All prize symbols may appear randomly throughout the possible locations on non-winning locations.

- D. POKER: No duplicate non-winning hands in any order.
- E. POKER: A straight will always appear in ascending order (2 thru A).
- F. POKER: No hand will appear that may be construed as a "wrap around" straight".
- G. POKER: There will be no occurrence of a Straight Flush (with the exception of the Royal Flush) or a Straight containing an ace.
- H. POKER: No duplicate cards (rank and suit) on a ticket.
- I. DOUBLE DOWN: No more than two pairs of like amounts.
- J. DOUBLE DOWN: No five (5) or more of a kind.
- K. SUPER SLOTS: There will be no occurrence of three (3) like symbols in a vertical or diagonal.
- L. SUPER SLOTS: No duplicate rows in any order.
- M. SUPER SLOTS: Non-winning prize symbols will never be the same as the winning prize symbol(s).
- N. 7-11-21: No duplicate non-winning rolls.
- O. 7-11-21: No roll will total 7, 11, or 21 in a vertical or diagonal.
- P. LUCKY NUMBERS: No duplicate non-winning Your Numbers on a ticket.
- Q. LUCKY NUMBERS: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).
- R. LUCKY NUMBERS: No duplicate non-winning prize symbols.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "CASINO ACTION" Instant Game prize of \$20.00, \$40.00, \$80.00, \$100, \$200, or \$400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00, \$80.00, \$100, \$200, or \$400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASINO ACTION" Instant Game prize of \$1,000, \$2,000, \$4,000, \$10,000 or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "CASINO ACTION" Instant Game prize of \$1,000,000 the claimant must sign the winning ticket and present it at the Texas Lottery Commission Claim Center. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning

ticket for that prize upon presentation of proper identification. The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "CASINO ACTION" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.F of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CASINO ACTION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will

require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 436. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 436 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20	740,000	4.05
\$40	160,000	18.75
\$80	80,000	37.50
\$100	40,000	75.00
\$200	20,000	150.00
\$400	7,375	406.78
\$1,000	300	10,000.00
\$2,000	100	30,000.00
\$4,000	100	30,000.00
\$10,000	10	300,000.00
\$100,000	6	500,000.00
\$1,000,000	3	1,000,000.00

\*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 2.86. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 436 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 436, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200308218  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: December 2, 2003



Instant Game No. 437 "Top Tens"

1.0 Name and Style of Game.

A. The name of Instant Game No. 437 is "TOP TENS". The play style is "add up with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 437 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 437.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 30, 40, 50, 60, 70, 80, 90, 2X, 3X, 5X, and 10X.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appear under the appropriate Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 437 - 1.2D

PLAY SYMBOL	CAPTION
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
30	TRY
40	FRY
50	FTY
60	SXY
70	SVY
80	ETY
90	NTY
2X	WINx2
3X	WINx3
5X	WINx5
10X	WINx10

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 437 - 1.2E

CODE	PRIZE
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100, \$250, or \$500.

I. High-Tier Prize - A prize of \$1,500, \$5,000, or \$100,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (437), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 437-0000001-000.

L. Pack - A pack of "TOP TENS" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate from pack to pack. One will show the front of ticket 000 and back of 074 while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements

of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TOP TENS" Instant Game No. 437 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TOP TENS" Instant Game is determined once the latex on the ticket is scratched off to expose 55 (fifty-five) play symbols. The player must add up the number of "10" play symbols in each horizontal row game. If the player adds up all of the "10" play symbols for that horizontal row game and the amount is [ASA1]equal to the required total amount printed on the ticket for that horizontal row game, then the player will win the prize for that game as indicated. If the player reveals a 2X, 3X, 5X, or 10X play symbol in the play area in a horizontal row game, the player will the corresponding prize multiplied by the amount indicated (2X, 3X, 5X, or 10X) for that horizontal row game automatically. Each game is played separately. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 55 (fifty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 55 (fifty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 55 (fifty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No three (3) or more like symbols on a ticket other than the "10" symbol.

C. Game 2 will always have one "10" symbol in a non-winning game.

D. Game 3 will always have at least one "10" symbol in a non-winning game.

E. Game 4 will always have at least two "10" symbols in a non-winning game.

F. Game 5 will always have at least three "10" symbols in a non-winning game.

G. Game 6 will always have at least four "10" symbols in a non-winning game.

H. Game 7 will always have at least five "10" symbols in a non-winning game.

I. Game 8 will always have at least six "10" symbols in a non-winning game.

J. Game 9 will always have at least seven "10" symbols in a non-winning game.

K. Game 10 will always have at least eight "10" symbols in a non-winning game.

L. There will never be more than one multiplier in a game.

M. When the multiplier symbol is used, all of the other symbols for that game will be a "10" symbol.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "TOP TENS" Instant Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$250, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$100, \$250, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TOP TENS" Instant Game prize of \$1,500, \$5,000, or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TOP TENS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TOP TENS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 437. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 437 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	435,200	9.38
\$20	462,400	8.82
\$30	54,400	75.00
\$50	54,400	75.00
\$100	27,200	150.00
\$250	13,600	300.00
\$500	6,392	638.30
\$1,500	160	25,500.00
\$5,000	20	204,000.00
\$100,000	8	510,000.00

\*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 437 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 437, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director. [ASA1]I removed "greater than or" because the player must match exactly the number of 10 symbols indicated on the ticket for that separate game. The game parameters do not allow there to be more than that specified number of 10 symbols for each particular game.

TRD-200308219  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: December 2, 2003

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### Texas Department of Mental Health and Mental Retardation

#### Request for Proposal

Pursuant to Texas Health and Safety Code §§533.049 and 533.050, the Texas Department of Mental Health and Mental Retardation (TDMHMR) is issuing the two following requests for proposals from private service providers:

- (1) A Request for Proposal to Manage a State Mental Retardation Facility; and
- (2) A Request for Proposal to Manage a State Mental Health Facility.

Detailed information regarding these requests for proposals may be obtained from the Electronic State Business Daily, <http://esbd.tbpc.state.tx.us>, the TDMHMR website, <http://www.mhmr.state.tx.us>, or Pat Martin, the TDMHMR Director of Central Contracting and Procurement Support, (512) 206-5512.

TRD-200308236  
 Rodolfo Arredondo  
 Chair, Texas MHMR Board  
 Texas Department of Mental Health and Mental Retardation  
 Filed: December 3, 2003

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### North Texas Workforce Development Board

#### Workforce Investment Act (WIA) Providers of Training Services

The North Texas Workforce Development Board (Board), Inc. and the Texas Workforce Commission are seeking training provider applicants for possible placement on the statewide list of approved training facilities in support of the Workforce investment Act (WIA).

WIA conducts Federal job training programs with a comprehensive workforce investment system to help Americans access tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers.

The Board is administrative entity for WIA programs within the North Texas Workforce Delivery Area, including: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young counties.

Eligible training providers are: post-secondary educational institutions, entities that carry out programs under the National Apprenticeship Act and, other public or private providers of a program of training services.

Obtain additional information by contacting John Chandler at the North Texas Workforce Development Board, Inc., 901 Indiana Ave. Ste. 180,

Wichita Falls, TX 76301, (940) 767-1432, FAX (940) 322-2683, or email at John.Chandler@twc.state.tx.us.

TRD-200308224

Mona Williams-Statser

Executive Director

North Texas Workforce Development Board

Filed: December 2, 2003

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**Public Utility Commission of Texas**

**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 November 24, 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 Panoptos, LLC for a Service Provider Certificate of Operating Authority, Docket Number 28953 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 entire 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 December 17, 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 28953.

TRD-200308196

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: December 1, 2003

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**Notice of Petition for Expanded Local Calling Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on May 15, 2003, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the City of Carrizo Springs Exchange for Expanded Local Calling Service, Project Number 27802.

The petitioners in the City of Carrizo Springs exchange request ELCS to the exchanges of Batesville, Eagle Pass, LaPryor, and Uvalde.

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 December 22, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 27802.

TRD-200308173

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: December 1, 2003

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**Public Notice of Amendment to Interconnection Agreement**

On November 25, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Bestline Communications, LP, 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 2004) (PURA). The joint application has been designated Docket Number 28958. 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 28958. 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 January 2, 2004, 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 28958.

TRD-200308186  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2003



#### Public Notice of Amendment to Interconnection Agreement

On November 25, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Quick-Tel, Incorporated, 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 2004) (PURA). The joint application has been designated Docket Number 28959. 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 28959. 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 January 2, 2004, 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 28959.

TRD-200308188  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2003



#### Public Notice of Amendment to Interconnection Agreement

On November 25, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Cypress Telecommunications Corporation, 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 2004) (PURA). The joint application has been designated Docket Number 28960. 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 28960. 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 January 2, 2004, 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 28960.

TRD-200308189  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2003



#### Public Notice of Amendment to Interconnection Agreement

On November 25, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Cypress Telecommunications Corporation, 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 2004) (PURA). The joint application has been designated Docket Number 28961. 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 28961. 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 January 2, 2004, 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 28961.

TRD-200308190  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2003



#### Public Notice of Amendment to Interconnection Agreement

On November 25, 2003, Covad Communications Company, and GTE Southwest, Incorporated, doing business as Verizon Southwest, 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 2004) (PURA). The joint application has been designated Docket Number 28966. 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 28966. 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 January 2, 2004, 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 28966.

TRD-200308193  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2003



### Public Notice of Amendment to Interconnection Agreement

On November 25, 2003, Dobson Cellular Systems, Incorporated and GTE Southwest, Incorporated doing business as Verizon Southwest, 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 2004) (PURA). The joint application has been designated Docket Number 28967. 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 28967. 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 January 2, 2004, 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 28967.

TRD-200308194  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2003



### Public Notice of Amendment to Interconnection Agreement

On November 25, 2003, Nextel of Texas, Incorporated, and GTE Southwest, Incorporated, doing business as, Verizon Southwest, 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 2004) (PURA). The joint application has been designated Docket Number 28968. 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 28968. 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 January 2, 2004, 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 28968.

TRD-200308195  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2003



### Public Notice of Amendment to Interconnection Agreement

On December 1, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Quick-Tel Communications, Incorporated, 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 2004) (PURA). The joint application has been designated Docket Number 28985. 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 28985. 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 January 2, 2004, 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 28985.

TRD-200308214  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 2, 2003



### Public Notice of Amendment to Interconnection Agreement

On December 1, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Connect Paging, Incorporated, 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 2004) (PURA). The joint application has been designated Docket Number 28986. 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 28986. 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 January 2, 2004, 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 28986.

TRD-200308215  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 2, 2003



### Public Notice of Interconnection Agreement

On November 25, 2003, Symatec Communications, and GTE Southwest, Incorporated, doing business as Verizon Southwest, collectively referred to as applicants, filed a joint application for approval to adopt the rates, terms, and conditions of a previously-approved interconnection agreement adopted pursuant to the §252(e) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA). The joint application has been designated Docket Number 28963. 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 28963. 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 January 2, 2004, 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 28963.

TRD-200308191  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2003



### Public Notice of Interconnection Agreement

On November 25, 2003, IDT America Corporation, and GTE Southwest, Incorporated, doing business as Verizon Southwest, collectively referred to as applicants, filed a joint application for approval to adopt the rates, terms, and conditions of a previously-approved interconnection agreement adopted pursuant to the §252(e) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA). The joint application has been designated Docket Number 28964. 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 28964. 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 January 2, 2004, 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 28964.

TRD-200308192

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: December 1, 2003



### Public Notice of Interconnection Agreement

On December 1, 2003, Nortex Communications, and Nextel Communications, Incorporated, doing business as Nextel of Texas, Incorporated, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 28984. 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 28984. 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 January 2, 2004, 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 28984.

TRD-200308213

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: December 2, 2003



### Office of Rural Community Affairs

#### Request for Proposals - Rural Health Facility Capital Improvement Loan Fund

The Office of Rural Community Affairs is issuing a Request for Proposals ("RFP") for the Rural Health Facility Capital Improvement Loan Fund. The purpose of this RFP is to provide the applicant with grant funding for capital improvement projects under the endowment fund created by HB 1676.

**USE OF FUNDS:** Funds are awarded for a specifically defined purpose and may not be used for any other project. Funds may be used to make capital improvements to existing facilities, construct new health facilities and to purchase capital equipment, including information systems hardware and software.

**AMOUNT OF AWARD:** Funds are available for projects of up to \$50,000. Funding will total approximately \$2,100,000, depending on the amount received from the Comptroller's Office. A 10% match requirement is in effect.

**ELIGIBLE APPLICANTS:** Eligible applicants include rural public and non-profit hospitals located in counties of less than 150,000 persons. Hospitals awarded funds during FY 2003 (September 2002 - August 2003) will not be eligible to apply.

**EVALUATION AND SELECTION:** Applications are initially screened for eligibility and completeness. Applications that do not meet the requirements in this RFP, may not be considered for review and the applicant will be notified in writing. After the initial screening, the applications will be scored by the scoring committee. The Executive Director will make a final determination.

**DEADLINE:** Completed applications are due by 2/13/04. Announcement of the selected applicants will be made by 03/01/04.

**CONTRACT PERIOD:** The first budget period for the applications funded under this RFP will begin 04/02/04 and continue for 6 months. The second budget period for the applications funded under this RFP

will begin 06/01/04 and continue for 6 months. The third budget period for the applications funded under this RFP will begin 08/31/04 and continue for 6 months.

CONTACT PERSON: To obtain the application, please contact:

Jennifer Hofmann, Capital Improvement Fund Administrator

Office of Rural Community Affairs

P.O. Box 12877

Austin, Texas, 78711

(512) 936-6701 or (800) 544-2042

email: [jhofmann@orca.state.tx.us](mailto:jhofmann@orca.state.tx.us)

TRD-200308230

Robt. J. "Sam" Tessen

Executive Director

Office of Rural Community Affairs

Filed: December 3, 2003



**Teacher Retirement System of Texas**

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

Government Code, §825.108 requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15th of each year containing the following information:

- (1) the retirement system's fiscal transactions for the preceding fiscal year;
- (2) the amount of the system's accumulated cash and securities; and
- (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108 of the Government Code requires TRS to publish a report in the *Texas Register* no later than March 1 of each year containing the balance sheet of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following reports as required by statute:

**Exhibit I****Teacher Retirement System Of Texas  
Statement of Net Assets - Fiduciary Funds**

August 31, 2003 (With Comparative Totals for August 31, 2002)

	FIDUCIARY FUND TYPES		
	Pension Trust Fund	Health Care Trust Fund Retired Plan	Agency Funds
<b>ASSETS</b>			
<b>Cash:</b>			
Cash In State Treasury	\$ 1,017,226,182	\$ 6,713,032	\$ 3,982
Cash in Bank	13,975,004		
Cash on Hand	6,916,348	16,820	
<b>TOTAL CASH</b>	<b>\$ 1,038,117,534</b>	<b>\$ 6,729,852</b>	<b>\$ 3,982</b>
<b>Legislative Appropriations</b>	<b>\$</b>	<b>\$</b>	<b>\$ 10,000,000</b>
<b>Receivables:</b>			
Sale of Investments	\$ 1,021,223,979	\$	\$
Interest and Dividends	305,842,250		
Member and Retiree	47,656,393	17,248,934	
Due from State's General Revenue Fund	45,081,175	1,974,000	
Reporting Employers	11,757,750		9,951,828
Other	369,531	1,000,000	
<b>TOTAL RECEIVABLES</b>	<b>\$ 1,431,931,078</b>	<b>\$ 20,222,934</b>	<b>\$ 9,951,828</b>
<b>Investments:</b>			
Short-Term	\$ 649,509,232	\$ 143,063	\$
Equities	52,697,198,670		
Fixed Income	21,282,297,734		
Alternative Investments	1,990,765,080		
<b>TOTAL INVESTMENTS</b>	<b>\$ 76,619,770,716</b>	<b>\$ 143,063</b>	<b>\$</b>
Invested Securities Lending Collateral	\$ 8,808,329,237	\$	\$
<b>Capital Assets:</b>			
Land	\$ 1,658,310	\$	\$
Building, Capital Projects and Equipment, at Cost			
Net of Accumulated Depreciation	30,533,007		
<b>TOTAL CAPITAL ASSETS</b>	<b>\$ 32,191,317</b>	<b>\$</b>	<b>\$</b>
<b>TOTAL ASSETS</b>	<b>\$ 87,930,339,882</b>	<b>\$ 27,095,849</b>	<b>\$ 19,955,810</b>

<b>TOTALS</b>	
2003	2002
\$ 1,023,943,196	\$ 879,786,909
13,975,004	17,390,684
6,933,168	14,822,339
<u>\$ 1,044,851,368</u>	<u>\$ 911,999,932</u>
\$ 10,000,000	\$ 483,287
\$ 1,021,223,979	\$ 124,252,018
305,842,250	310,167,543
64,905,327	59,011,522
47,055,175	55,313,940
21,709,578	18,362,029
1,369,531	1,209,609
<u>\$ 1,462,105,840</u>	<u>\$ 568,316,661</u>
\$ 649,652,295	\$ 251,005,830
52,697,198,670	47,158,684,804
21,282,297,734	21,936,912,851
1,990,765,080	1,590,417,738
<u>\$ 76,619,913,779</u>	<u>\$ 70,937,021,223</u>
\$ 8,808,329,237	\$ 63,407,088
\$ 1,658,310	\$ 1,658,310
30,533,007	31,188,802
<u>\$ 32,191,317</u>	<u>\$ 32,847,112</u>
\$ 87,977,391,541	\$ 72,514,075,303

(to next page)

**Exhibit I****Teacher Retirement System Of Texas****Statement of Net Assets - Fiduciary Funds**

August 31, 2003 (With Comparative Totals for August 31, 2002)

(concluded)

	FIDUCIARY FUND TYPES		
	Pension Trust Fund	Health Care Trust Fund Retired Plan	Agency Funds
<b>LIABILITIES</b>			
Accounts Payable	\$ 3,371,476	\$ 12,205,731	\$ 10,000,000
Accounts Payable-General Revenue Fund			9,951,828
Benefits Payable	447,463,997		
Health Care Claims Payable		97,814,000	
Reinstatement Installment Receipts	27,000,240		
Investments Purchased Payable	1,008,854,827		
Securities Lending Collateral	8,808,329,237		
Compensable Absences Payable	2,317,644	43,604	
Funds Held for Others			3,982
<b>TOTAL LIABILITIES</b>	<b>\$ 10,297,337,421</b>	<b>\$ 110,063,335</b>	<b>\$ 19,955,810</b>
<b>NET ASSETS HELD IN TRUST FOR PENSION BENEFITS AND OTHER PURPOSES</b>			
	\$ 77,633,002,461	\$ (82,967,486)	\$ - 0 -

<b>TOTALS</b>	
2003	2002
\$ 25,577,207	\$ 13,038,016
9,951,828	8,358,434
447,463,997	409,870,523
97,814,000	78,724,190
27,000,240	28,336,570
1,008,854,827	117,526,610
8,808,329,237	63,407,088
2,361,248	2,197,472
3,982	12,463
<u>\$ 10,427,356,566</u>	<u>\$ 721,471,366</u>
<u>\$ 77,550,034,975</u>	<u>\$ 71,792,603,937</u>



**Exhibit II****Teacher Retirement System Of Texas  
Statement of Changes in Fiduciary Net Assets  
YEAR ENDED AUGUST 31 (With Comparative Totals for August 31, 2002)**

	<b>Pension Trust Fund</b>	<b>Health Care Trust Fund Retired Plan</b>
<b>Additions:</b>		
Contributions:		
Member	\$ 1,516,801,535	\$ 49,170,399
State	1,239,070,201	265,001,861
Reporting Employers	182,536,228	
Health Care Premiums		162,917,666
On Behalf Fringe Benefits Paid by the State		36,344
<b>TOTAL CONTRIBUTIONS</b>	<b>\$ 2,938,407,964</b>	<b>\$ 477,126,270</b>
<b>Investment Income:</b>		
From Investing Activities:		
Net Appreciation (Depreciation) in Fair Value of Investments	\$ 5,673,389,054	\$
Interest	1,224,502,529	3,394,956
Dividends	900,563,260	
<b>Total Investing Activities Income (Loss)</b>	<b>\$ 7,798,454,843</b>	<b>\$ 3,394,956</b>
Less Investing Activity Expenses	(14,604,331)	
<b>Net Income (Loss) from Investing Activities</b>	<b>\$ 7,783,850,512</b>	<b>\$ 3,394,956</b>
From Securities Lending Activities:		
Securities Lending Income	\$ 108,579,174	\$
Securities Lending Expenses:		
Borrower Rebates	(82,193,784)	
Management Fees	(3,957,811)	
<b>Net Income from Securities Lending Activities</b>	<b>\$ 22,427,579</b>	<b>\$</b>
<b>TOTAL NET INVESTMENT INCOME (LOSS)</b>	<b>\$ 7,806,278,091</b>	<b>\$ 3,394,956</b>
<b>Other Additions:</b>		
Reinstatement of Contribution Refunds	\$ 100,499,600	\$
Reinstatement Fees	54,911,252	
Transfers from Employees Retirement System of Texas	4,037,793	
Legislative Appropriations for Administrative Expenses		
Legislative Appropriations for Excess Benefits	461,925	
Miscellaneous Revenues	1,501	
<b>TOTAL OTHER ADDITIONS</b>	<b>\$ 159,912,071</b>	<b>\$</b>
<b>TOTAL ADDITIONS</b>	<b>\$ 10,904,598,126</b>	<b>\$ 480,521,226</b>

<b>TOTALS</b>	
2003	2002
\$ 1,565,971,934	\$ 1,497,689,613
1,504,072,062	1,581,528,806
182,536,228	157,781,530
162,917,666	143,797,748
36,344	59,685
<u>\$ 3,415,534,234</u>	<u>\$ 3,380,857,382</u>
\$ 5,673,389,054	\$ (8,477,880,514)
1,227,897,485	1,588,189,790
900,563,260	791,432,459
<u>\$ 7,801,849,799</u>	<u>\$ (6,098,258,265)</u>
(14,604,331)	(12,921,671)
<u>\$ 7,787,245,468</u>	<u>\$ (6,111,179,936)</u>
\$ 108,579,174	\$ 221,743,856
(82,193,784)	(167,792,011)
(3,957,811)	(9,375,669)
<u>\$ 22,427,579</u>	<u>\$ 44,576,176</u>
<u>\$ 7,809,673,047</u>	<u>\$ (6,066,603,760)</u>
\$ 100,499,600	\$ 64,705,929
54,911,252	45,682,652
4,037,793	3,091,464
	2,674,579
461,925	690,735
1,501	108,689
<u>\$ 159,912,071</u>	<u>\$ 116,954,048</u>
<u>\$ 11,385,119,352</u>	<u>\$ (2,568,792,330)</u>

(to next page)

**Exhibit II****Teacher Retirement System Of Texas****Statement of Changes in Fiduciary Net Assets****YEAR ENDED AUGUST 31 (With Comparative Totals for August 31, 2002)**

(concluded)

	<b>Pension Trust Fund</b>	<b>Health Care Trust Fund Retired Plan</b>
<b>Deductions:</b>		
Benefits	\$ 4,728,815,398	\$
Refunds of Contributions	186,082,670	
Health Care Claims		571,744,362
Health Care Claims Processing		19,388,818
Administrative Expenses (Net of Investing Activity Expenses above)	23,428,162	2,301,516
Transfers to Employees Retirement System of Texas	28,609,871	
Transfer to TRS-ActiveCare Enterprise Fund		42,000,000
Excess Benefits	461,925	
<b>TOTAL DEDUCTIONS</b>	<b>\$ 4,967,398,026</b>	<b>\$ 635,434,696</b>
<b>Net Increase (Decrease)</b>	<b>\$ 5,937,200,100</b>	<b>\$ (154,913,470)</b>
<b>Net Assets Held in Trust for Pension Benefits and Other Purposes - Beginning of Year</b>	<b>\$ 71,695,802,361</b>	<b>\$ 71,945,984</b>
<b>Restatements</b>		
<b>Beginning of Year, As Restated</b>	<b>\$ 71,695,802,361</b>	<b>\$ 71,945,984</b>
<b>Net Assets Held in Trust for Pension Benefits and Other Purposes - End of Year</b>	<b>\$ 77,633,002,461</b>	<b>\$ (82,967,486)</b>

<b>TOTALS</b>	
2003	2002
\$ 4,728,815,398	\$ 4,344,255,724
186,082,670	186,421,065
571,744,362	451,675,215
19,388,818	16,828,256
25,729,678	29,510,909
28,609,871	24,183,510
42,000,000	
461,925	690,735
<u>\$ 5,602,832,722</u>	<u>\$ 5,053,565,414</u>
\$ 5,782,286,630	\$ (7,622,357,744)
\$ 71,767,748,345	\$ 79,416,044,151
	(1,082,470)
<u>\$ 71,767,748,345</u>	<u>\$ 79,414,961,681</u>
<u>\$ 77,550,034,975</u>	<u>\$ 71,792,603,937</u>

**Exhibit III****Teacher Retirement System Of Texas  
Statement of Net Assets - Proprietary Fund  
AUGUST 31, 2003**

	<u>TRS-ActiveCare Enterprise Fund</u>
<b>ASSETS</b>	
<b>Current Assets:</b>	
<b>Cash:</b>	
Cash In State Treasury	\$ 207,930,193
Cash on Hand	171,305
<b>TOTAL CASH</b>	<u>\$ 208,101,498</u>
<b>Accounts Receivable:</b>	
Health Care Premiums	\$ 19,853,424
Short-Term Investments	\$ 48,044
<b>TOTAL ASSETS</b>	<u>\$ 228,002,966</u>
<b>LIABILITIES</b>	
<b>Current Liabilities:</b>	
Accounts Payable	\$ 684,901
Health Care Claims Payable	90,848,902
Compensable Absences Payable	47,384
<b>TOTAL LIABILITIES</b>	<u>\$ 91,581,187</u>
<b>NET ASSETS</b>	
Restricted For Legislative Appropriations Transfer	\$ 42,000,000
Unrestricted	94,421,779
<b>TOTAL NET ASSETS</b>	<u>\$ 136,421,779</u>

**Exhibit IV****Teacher Retirement System Of Texas****Statement of Revenues, Expenses, and Changes in Net Assets - Proprietary Fund**

For the Year Ended August 31, 2003

	<u>TRS-ActiveCare</u> <u>Enterprise Fund</u>
<b>Operating Revenues:</b>	
Health Care Premiums	\$ 584,572,852
Administrative Fees	136,288
On Behalf Fringe Benefits Paid by the State	31,266
<b>TOTAL OPERATING REVENUES</b>	<u>\$ 584,740,406</u>
<b>Operating Expenses:</b>	
Health Care Claims	\$ 473,450,544
Health Care Claims Processing	42,411,388
Administrative Expenses	1,771,441
<b>TOTAL OPERATING EXPENSES</b>	<u>\$ 517,633,373</u>
<b>OPERATING INCOME</b>	<u>\$ 67,107,033</u>
<b>Nonoperating Revenues:</b>	
Investment Income	\$ 2,459,154
<b>Income Before Transfers</b>	<u>\$ 69,566,187</u>
<b>Transfers:</b>	
Legislative Appropriations Transfer from Retired Plan	\$ 42,000,000
<b>Change in Net Assets</b>	<u>\$ 111,566,187</u>
<b>Total Net Assets - Beginning</b>	<u>\$ 24,855,592</u>
<b>Total Net Assets - Ending</b>	<u><u>\$ 136,421,779</u></u>

**Exhibit V****Teacher Retirement System Of Texas  
Statement of Cash Flows - Proprietary Fund  
For the Year Ended August 31, 2003**

	<b>TRS-ActiveCare Enterprise Fund</b>
<b>Cash Flows from Operating Activities</b>	
Receipts from Health Care Premiums	\$ 564,845,229
Receipts from Long-Term Care Administrative Fees	136,288
Payments for Administrative Expenses	(1,175,143)
Payments for Health Care Claims	(382,601,642)
Payments for Health Care Processing	(42,411,388)
Net Cash Provided by Operating Activities	<u>\$ 138,793,344</u>
<b>Cash Flows from Noncapital Financing Activities</b>	
Proceeds from Legislative Appropriations Transfer from Retired Plan	\$ 42,000,000
Net Cash Provided by Noncapital Financing Activities	<u>\$ 42,000,000</u>
<b>Cash Flows from Investing Activities</b>	
Proceeds from Custodian Transfer to State Treasury	\$ 23,734,687
Proceeds from Treasury Interest Income	2,408,582
Net Cash Provided by Investing Activities	<u>\$ 26,143,269</u>
Net Increase in Cash	<u>\$ 206,936,613</u>
Cash - September 1, 2002	\$ 1,164,885
Cash - August 31, 2003	<u>\$ 208,101,498</u>
<b>Reconciliation of Operating Income to Net Cash Provided (Used) by Operating Activities</b>	
Operating Income	<u>\$ 67,107,033</u>
Adjustments to Reconcile Operating Income to Net Cash Provided (Used) by Operating Activities:	
(Increase) in Health Care Premiums	\$ (19,853,424)
Increase in Accounts Payable	684,403
Increase in Health Care Claims Payable	90,848,902
Increase in Compensable Absences Payable	6,430
Total Adjustments	<u>\$ 71,686,311</u>
Net Cash Provided by Operating Activities	<u>\$ 138,793,344</u>

**Exhibit VI****Teacher Retirement System Of Texas****Balance Sheet and Statement of Revenues, Expenditures and****Changes in Fund Balance - Governmental Fund****YEAR ENDED AUGUST 31, 2003 (With Comparative Totals for August 31, 2002)****Balance Sheet**

	403(b) Certification Program Special Revenue Fund	
	2003	2002
<b>ASSETS</b>		
<b>Current Assets:</b>		
Cash in State Treasury	\$ 223,739	\$ 201,044
Accounts Receivable		10,000
<b>Total Assets</b>	<b>\$ 223,739</b>	<b>\$ 211,044</b>
<b>LIABILITIES AND FUND BALANCE:</b>		
<b>Liabilities</b>		
<b>Current Liabilities:</b>		
Accounts Payable	\$ 2,000	\$ 3,445
Compensable Absences		1,600
<b>Total Liabilities</b>	<b>\$ 2,000</b>	<b>\$ 5,045</b>
<b>Fund Balance Reserved for:</b>		
Administrative Expenditures	\$ 221,739	\$ 205,999
<b>Total Liabilities and Fund Balance</b>	<b>\$ 223,739</b>	<b>\$ 211,044</b>

**Statement of Revenues, Expenditures and  
Changes in Fund Balance**

	403(b) Certification Program Special Revenue Fund	
	2003	2002
<b>REVENUES:</b>		
Certification Fees	\$ 55,000	\$ 325,000
Investment Income	4,617	1,164
On Behalf Fringe Benefits Paid by the State	1,197	3,953
<b>Total Revenues</b>	<b>\$ 60,814</b>	<b>\$ 330,117</b>
<b>EXPENDITURES:</b>		
Administrative Expenditures	\$ 46,674	\$ 122,518
Compensable Absences	(1,600)	1,600
<b>Total Expenditures</b>	<b>\$ 45,074</b>	<b>\$ 124,118</b>
<b>Excess of Revenues over Expenditures</b>	<b>\$ 15,740</b>	<b>\$ 205,999</b>
<b>FUND BALANCE - BEGINNING</b>	<b>\$ 205,999</b>	<b>\$</b>
<b>FUND BALANCE - ENDING</b>	<b>\$ 221,739</b>	<b>\$ 205,999</b>



**Exhibit A**

**Teacher Retirement System Of Texas**  
**Combining Statement of Changes in Assets and Liabilities**  
**AGENCY FUNDS - YEAR ENDED AUGUST 31, 2003**

	Balances September 1, 2002		Additions	Deductions	Balances August 31, 2003
<b>UNAPPROPRIATED RECEIPTS</b>					
<b>Collections on Behalf of the State's General Revenue Fund</b>					
Assets:					
Cash in State Treasury	\$		\$ 151,437,563	\$ 151,437,563	\$
Accounts Receivable-Reporting Employers		8,358,434	9,951,828	8,358,434	9,951,828
<b>TOTAL ASSETS</b>	<b>\$</b>	<b>8,358,434</b>	<b>\$ 161,389,391</b>	<b>\$ 159,795,997</b>	<b>\$ 9,951,828</b>
Liabilities:					
Accounts Payable-General Revenue Fund	\$	8,358,434	\$ 9,951,828	\$ 8,358,434	\$ 9,951,828
<b>OTHER AGENCY FUNDS</b>					
<b>Pass-Through Funding to School Districts</b>					
Assets:					
Legislative Appropriations	\$		\$ 606,162,848	\$ 596,162,848 *	\$ 10,000,000
Liabilities:					
Accounts Payable	\$		\$ 10,000,000		\$ 10,000,000
<b>Employees' Savings Bond Account</b>					
Assets:					
Cash in State Treasury	\$	1,175	\$ 13,625	\$ 13,775	\$ 1,025
Liabilities:					
Funds Held for Others	\$	1,175	\$ 13,600	\$ 13,750	\$ 1,025
<b>Direct Deposit Correction Account Fund</b>					
Assets:					
Cash in State Treasury	\$	11,288	\$ 1,787,539	\$ 1,795,870	\$ 2,957
Liabilities:					
Funds Held for Others	\$	11,288	\$ 1,787,539	\$ 1,795,870	\$ 2,957

(to next page)

\* Legislative Appropriations deductions consist of payments to public education entities in the amounts of \$575,552,250 for Supplemental Compensation, \$19,785,683 for Minimum Effort Transition Assistance, and \$824,915 for Social Security Assistance. These payments were authorized by H.B. 3343, 77th Legislature, as part of the Texas Active School Employees Uniform Benefits Act.

**Exhibit A****Teacher Retirement System Of Texas****Combining Statement of Changes in Assets and Liabilities**

(concluded)

	<b>Balances</b>			<b>Balances</b>
	<b>September 1,</b>	<b>Additions</b>	<b>Deductions</b>	<b>August 31,</b>
	<b>2002</b>			<b>2003</b>
<b>TOTALS - ALL AGENCY FUNDS</b>				
				(Exhibit D)
<b>Assets:</b>				
Cash in State Treasury	\$ 12,463	\$ 153,238,727	\$ 153,247,208	\$ 3,982
Legislative Appropriations		606,162,848	596,162,848	10,000,000
Accounts Receivable-Reporting Employers	8,358,434	9,951,828	8,358,434	9,951,828
<b>TOTAL ASSETS</b>	<b>\$ 8,370,897</b>	<b>\$ 769,353,403</b>	<b>\$ 757,768,490</b>	<b>\$ 19,955,810</b>
<b>Liabilities:</b>				
Accounts Payable	\$	\$ 10,000,000	\$	\$ 10,000,000
Accounts Payable-General Revenue Fund	8,358,434	9,951,828	8,358,434	9,951,828
Funds Held for Others	12,463	1,801,139	1,809,620	3,982
<b>TOTAL LIABILITIES</b>	<b>\$ 8,370,897</b>	<b>\$ 21,752,967</b>	<b>\$ 10,168,054</b>	<b>\$ 19,955,810</b>

**Exhibit B****Teacher Retirement System Of Texas****Rate of Return on Assets****Year Ended August 31, 2003**

	<b>Pension Trust Fund</b>	<b>Health Care Plans and 403(b) Program</b>
<b>Cash and Short-Term Investments</b>	<b>1.63%</b>	<b>3.09%</b>
<b>Long-Term Investments: *</b>		
<b>Equities</b>	<b>13.32%</b>	
<b>Fixed Income</b>	<b>5.75%</b>	
<b>Alternative Investments</b>	<b>8.11%</b>	

\* Rates for Long-Term Investments include appreciation in market values.



**GABRIEL, ROEDER, SMITH & COMPANY**

Consultants & Actuaries

5605 N. MacArthur Blvd. • Suite 870 • Irving, Texas 75038-2631 • 469-524-0000 • fax 469-524-0003

November 5, 2003

**BOARD OF TRUSTEES**

Teacher Retirement System of Texas  
1000 Red River Street  
Austin, TX 78701-2698

**Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 2003**

We certify that the information included herein and contained in the 2003 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 2003.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. Carter is a member of the American Academy of Actuaries, and is also an Enrolled Actuary. All are experienced in performing valuations for large public retirement systems.

**Actuarial Valuations**

The primary purpose of the valuation report is to determine the adequacy of the current State contribution rate through measuring the resulting funding period, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the report provides information required by the System in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the System's plan and fiscal year.

**Financing Objective of the Plan**

Contribution rates are established by Law that, over time, are intended to remain level as a percent of payroll. The employee and State contribution rates have been set by Law and are intended to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 31 years.

**Progress Toward Realization of Financing Objective**

The actuarial accrued liability, the unfunded actuarial accrued liability (UAAL), and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 2003, the System's underfunded status has increased because of the recognition of the prior two years poor investment markets, and the UAAL is now \$5.230 billion.

This valuation shows a normal cost equal to 12.46% of pay. Since the State contribution rate of 6.00% of pay plus the member contribution rate of 6.40% of pay total 12.40% of pay, and since this total contribution rate is less than the normal cost rate, there are no contributions available to amortize the UAAL. Therefore the funding period corresponding to the 6.00% State contribution rate is "never" or infinite, which is greater than the statutory limit of 31 years.

The actuarial valuation report as of August 31, 2003 reveals that while the System has an unfunded liability, it still has a funded ratio (the ratio of actuarial assets to actuarial accrued liability) of 94.5%. However, the System is still deferring \$1.4 billion in prior asset losses that will be recognized over the next three valuations. Even though the System earned an 11.0% return on a market value of assets basis for the plan year ending August 31, 2003, the System experienced a \$2.0 billion loss on the actuarial value of assets due to the recognition of prior investment losses.

In the absence of significant actuarial gains over the near term, the contribution rate to the System will need to increase to produce a funding period that does not exceed 31 years. The System would need to earn an average rate of return of 12.7% on a market value basis over the next three years to offset the deferred asset losses that are scheduled to be recognized over the next three valuations. Even if these losses were somehow offset, the current

unfunded liability of \$5.2 billion would still require an increase in the contribution rate in order to be amortized. Using GASB Statement No. 25 as a guide, the State contribution rate would need to increase from 6.00% of pay to 7.39% of pay. This rate would fund the normal cost and amortize the UAAL as of August 31, 2003 over the 30-year period called for by GASB Statement No. 25.

It seems unlikely that the System will be able to generate the necessary gains (either asset or liability gains) to offset these deferred asset losses. In fact, if the System earns 8% on a market value basis for the 2003/04 plan year, the System can expect to recognize a \$4.4 billion loss on the actuarial value of assets. Therefore, we believe the Board should begin laying the groundwork with the Legislature for an increase in the contribution rate. The Board will have the results of another actuarial valuation prior to the next Legislative Session, which the Board can use to better define the recommended increase in the contribution rate, but we believe that is important that the message be delivered to the appropriate State Budget personnel that a request for additional funding will be forthcoming.

Any increase in the State contribution rate, however, should be put in historical perspective. Except for non-actuarial issues (related to Texas budget reasons), the TRS State contribution rate has either decreased or not increased since 1979. Even at 7.39%, the State contribution rate would be less than it was for the 1989/1990 - 1990/1991 biennium.

Caution is warranted over the next few years. There should be no benefit increases passed by the Legislature over the next several Legislative Sessions without adequate funding, and the funded status should be carefully monitored. As noted above, in the absence of significant actuarial gains over the near term, an increase in the State contribution rate will be necessary to maintain the actuarial soundness of the System.

#### **Plan Provisions**

The plan provisions used in the actuarial valuation are described in Table 20 of the valuation report. This valuation reflects the changes to plan provisions as enacted by the 78th Texas Legislature.

#### **Disclosure of Pension Information**

Effective for the fiscal year ending August 31, 1996, the Board of Trustees has adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25.

#### **Actuarial Methods and Assumptions**

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 21 of the valuation report. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are based on a study of actual experience for the four year period ending August 31, 1999 and were adopted on March 31, 2000. Further modifications were made based on the recommendation of the actuary. These changes were adopted by the Board on September 27, 2002.

In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations.

#### **Data**

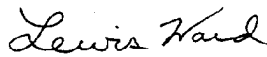
In preparing the August 31, 2003 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior years' data.

The schedules shown in the actuarial section and the trend data schedules in the financial section of the TRS financial report include selected actuarial information prepared by TRS staff. Six year historical information included in these schedules was based upon our work. For further information please see the full actuarial valuation report.

Respectfully submitted,  
Gabriel, Roeder, Smith & Company



W. Michael Carter, FSA, EA, MAAA  
Senior Consultant



Lewis Ward  
Consultant



Joe Newton, ASA  
Senior Analyst

GABRIEL, ROEDER, SMITH & COMPANY

## Actuarial Present Value of Future Benefits

ACTUARIAL VALUATION - AUGUST 31, 2003

	August 31,	
	2003	2002
<b>Present Value of Benefits Presently Being Paid:</b>		
Service Retirement Benefits	\$ 39,855,845,308	\$ 36,157,908,033
Disability Retirement Benefits	829,882,596	818,188,000
Death Benefits	629,445,482	768,243,000
Present Survivor Benefits	159,810,826	193,210,000
<b>TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID</b>	<b>\$ 41,474,984,212</b>	<b>\$ 37,937,549,033</b>
<b>Present Value of Benefits Payable in the Future to Present Active Members:</b>		
Service Retirement Benefits	\$ 72,627,163,340	\$ 70,896,102,172
Disability Retirement Benefits	1,334,277,382	1,288,660,934
Termination Benefits	4,703,320,045	4,499,838,330
Death and Survivor Benefits	1,636,283,604	1,714,253,958
<b>TOTAL ACTIVE MEMBER LIABILITIES</b>	<b>\$ 80,301,044,371</b>	<b>\$ 78,398,855,394</b>
<b>Present Value of Benefits Payable in the Future to Present Inactive Members:</b>		
Inactive Vested Participants Retirement Benefits	\$ 979,820,873	\$ 936,311,478
Death Benefits	59,399,100	30,569,400
<b>TOTAL INACTIVE VESTED BENEFITS</b>	<b>\$ 1,039,219,973</b>	<b>\$ 966,880,878</b>
Refunds of Contributions to Inactive Non-vested Members	\$ 166,059,923	\$ 143,745,906
Future Survivor Benefits Payable on Behalf of Present Annuitants	\$ 695,568,135	\$ 652,645,000
<b>TOTAL INACTIVE LIABILITIES</b>	<b>\$ 1,900,848,031</b>	<b>\$ 1,763,271,784</b>
<b>TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS</b>	<b>\$ 123,676,876,614</b>	<b>\$ 118,099,676,211</b>

## Summary of Cost Items

	2003	2002
Actuarial Present Value of Future Benefits	\$ 123,676,876,614	\$ 118,099,676,211
Present Value of Future Normal Costs	(29,413,849,072)	(28,777,270,609)
Actuarial Accrued Liability	94,263,027,542	89,322,405,602
Actuarial Value of Assets	(89,033,023,666)	(86,034,962,833)
<b>UNFUNDED ACTUARIAL ACCRUED LIABILITY</b>	<b>\$ 5,230,003,876</b>	<b>\$ 3,287,442,769</b>

TRD-200308226  
Ronnie Jung  
Interim Executive Director  
Teacher Retirement System of Texas  
Filed: December 3, 2003

◆ ◆ ◆  
**Waco Urban Transportation Study MPO**

**Request for Proposals**

The Waco Metropolitan Planning Organization (MPO) is seeking qualified firms to assist in the development of an update to the Waco Urbanized Area Metropolitan Transportation Plan and the Waco Metropolitan Bicycle and Pedestrian Plan. Consultants with expertise in the fields of transportation planning and/or bicycle and pedestrian planning are encouraged to submit proposals. A Request for Proposal (RFP) package is available online at [www.waco-texas.com/mpo.htm](http://www.waco-texas.com/mpo.htm) and provides details on the submission procedures, proposed scope of services, and regulations that prospective proposers are required to follow.

Proposals will be accepted by the MPO through 5:00 PM CST, Monday, December 22, 2003. Copies of the RFP package may be downloaded free of charge online at the MPO's website: [www.waco-texas.com/mpo.htm](http://www.waco-texas.com/mpo.htm). A paper copy of the RFP Package may be obtained by mailing a request to Christopher Evilia, Acting MPO Director, Waco MPO, P.O. Box 2570, Waco, Texas 76702-2570, faxing a request to (254) 750-1605 or by e-mail at [mpo@ci.waco.tx.us](mailto:mpo@ci.waco.tx.us). Prepayment of \$7.00 for copying and postage and handling is required for paper copies.

Proposals will be judged by a committee comprised of MPO Staff and MPO Technical Committee members. Proposals will be evaluated on the technical merits of the proposal and the qualifications of the firm and personnel. The evaluation committee will recommend the most qualified firm with which to enter into negotiations. Should negotiations be unsuccessful, negotiations will commence with the next most qualified firm and so on. The Waco City Council will make the final decision in awarding a contract.

All inquiries regarding this RFP should be made to Christopher Evilia, Acting MPO Director, Waco MPO, P.O. Box 2570, Waco, Texas 76702-2570, (254) 750-5666.

Please note that this is the second release of an RFP for this project.

TRD-200308231  
Christopher Evilia  
Acting Director  
Waco Urban Transportation Study MPO  
Filed: December 3, 2003

◆ ◆ ◆  
**Texas Water Development Board**

**Applications Received**

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Kempner Water Supply Corporation, P.O. Box 103, Kempner, Texas, 76539, received October 1, 2003, application for financial assistance in the amount of \$20,226,000 from the Texas Water Development Funds.

City of Roma, 77 Convent Street, Roma, Texas, 78584, received December 2, 2003, application for financial assistance in the total amount of \$3,240,000 from the Economically Distressed Areas Program.

Tamina Water Supply and Sewer Service Corporation, P.O. Box 7602, The Woodlands, Texas, 77387, received September 2, 2003, application for financial assistance in the amount of \$2,040,000 from the Clean Water State Revolving Fund.

Northridge Water Supply Corporation, c/o Professional General Management Services, Inc., 1600 Stagecoach Ranch Road, Dripping Springs, Texas, 78620, received August 1, 2002, application for financial assistance in the amount of \$480,000 from the Rural Water Assistance Fund.

TRD-200308256  
Jonathan Steinberg  
Deputy Counsel  
Texas Water Development Board  
Filed: December 3, 2003

◆ ◆ ◆

## 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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