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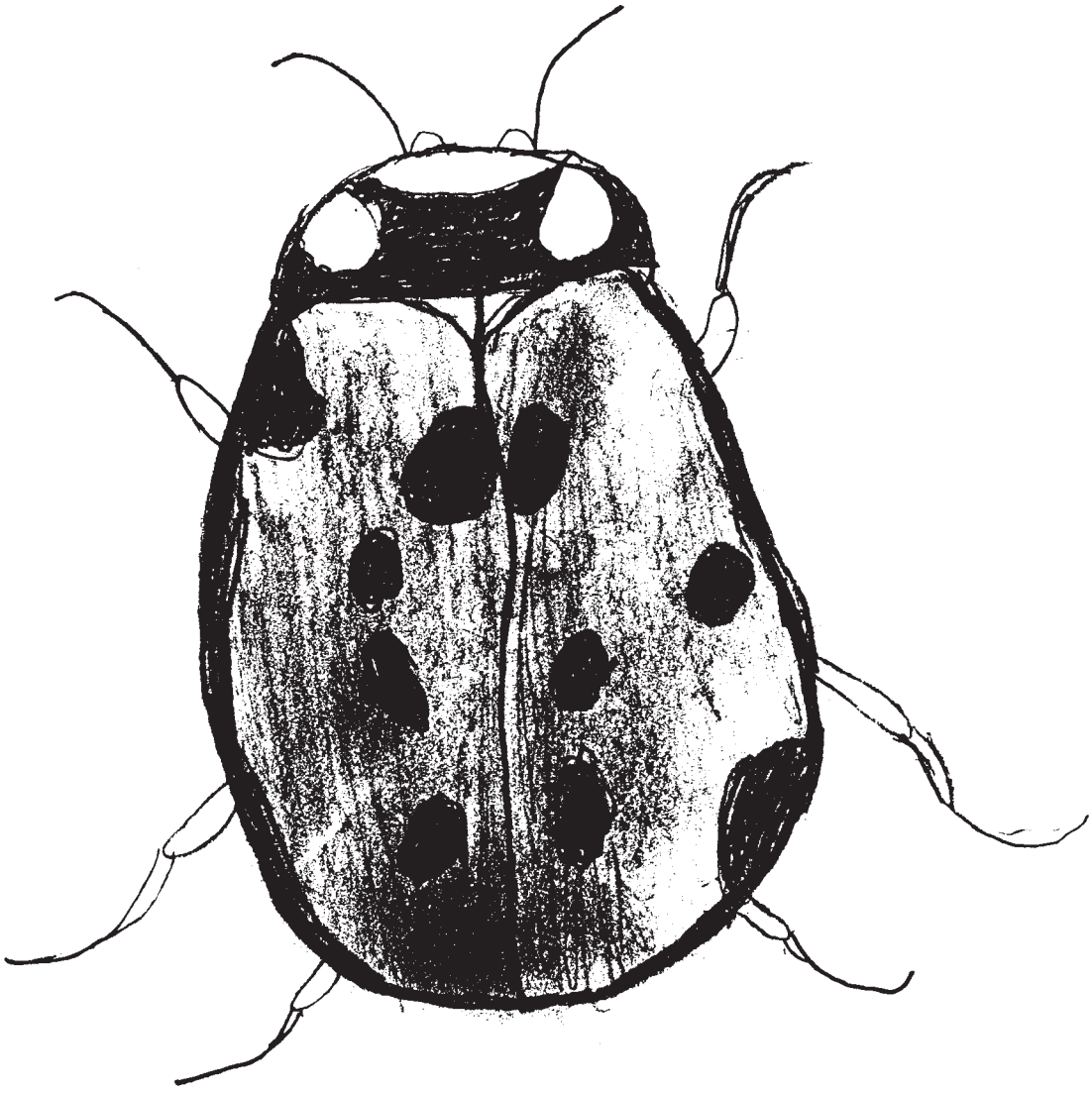

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3rd Grade

Coggin Elementary

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. 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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THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, 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 Made June 9, 1999

To be a member of the State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 2005: Brenda B. VanAmburgh, Ph.D., 4609 Fieldcrest, Forth Worth, Texas 76109. Dr. Van Amburgh will be replacing Maria T. Flores of San Antonio whose term expired.

To be a member of the Texas Higher Education Coordinating Board for a term to expire August 31, 2003: Raul B. Fernandez, 9111 Powhatan, San Antonio, Texas 78230. Mr. Fernandez will be filling the unexpired term of Douglas S. Harlan of San Antonio who was not confirmed by the Senate.

George W. Bush, Governor of Texas

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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion #JC-0066. (RQ-1006). Request from the Honorable Kenneth Armbrister Chair, Criminal Justice Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, regarding whether a city may remit payments to Texas Municipal Retirement System that it failed to make more than 20 years ago?

Summary. Section 855.410 of the Government Code, which imposes an interest payment on contributions that are not remitted by a participating municipality to the Texas Municipal Retirement System ("TMRS") by the sixteenth day of each month, does not establish a procedure for correcting errors in municipal employees' retirement accounts. Pursuant to its construction of the statute it administers, TMRS may refuse to accept retirement contributions from a city more than four years after the time they were due the retirement system. Section 852.110 of the Government Code, adopted by the Seventy-sixth Legislature and effective December 31, 1999, will govern the correction of service credit reports that were made or should have been made by participating cities. Pursuant to section 852.110 of the Government Code, corrections may not be made more that four years after the report should have been made.

Opinion #JC-0067. (RQ-1203). Request from Mr. Gary L. Warren, Sr. Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286, regarding whether the Texas Fire Chiefs' Association, the Texas State Association of Fire Fighters, the State Firemen's and Fire Marshals' Association of Texas, or the Texas Association of Fire Educators is a "trade association" for purposes of section 419.006 of the Government Code.

Summary. Assuming that an organization is not composed of business and professional competitors, it is not a trade association for purposes of section 419.006 of the Government Code.

Opinion #JC-0068. (RQ-1157). Request from the Honorable Jos R. Rodriguez, El Paso County Attorney, County Courthouse, 500 East San Antonio, Room 203, El Paso, Texas 79901, regarding whether a hospital district is authorized to execute a contract to hedge against interest rate fluctuations.

Summary. A hospital district is not authorized to execute an interest rate hedge contract that entitles the district to receive a lump sum if market interest rates rise in relation to the interest rate on certain outstanding district bonds but that requires the district to pay out a lump sum if interest rates fall.

TRD-9903579
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: June 16, 1999

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans-Standards

1 TAC §251.3

The Advisory Commission on State Emergency Communications (ACSEC) proposes an amendment to §251.3, concerning Guidelines for Addressing Funds to ensure the collection of address data.

The amendment requires the reporting to the ACSEC of such addressing data on a quarterly basis, at a minimum, or on an as-needed basis. The amendment also addresses the reallocation of pool funds.

This section is amended as part of the agency's rule review of Chapter 251, Pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The proposed rule review of Chapter 251 was previously published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4255)

James D. Goerke, executive director, ACSEC, 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. Goerke also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be improved record keeping for accountability of 9-1-1 funds. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the amendment may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.056, and 771.075, which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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

§251.3. Guidelines for Addressing Funds.

(a) (No change.)

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

(1)-(10) (No change.)

(11) Regional Plan. Each regional planning commission shall develop and plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The service must meet the standards established by the [~~Advisory~~] Commission.

(12)-(16) (No change.)

(17) Unaddressed Land Parcel Count. The estimated number of county land parcels, which have not been addressed, [~~no address~~] as calculated by counties [~~to be addressed~~].

(18)-(20) (No change.)

(c) Policy and Procedures. The Commission authorizes and allocates addressing funds to include Addressing Pool Funds and 9-1-1 Funds. Addressing Pool Funds may include funds not actually provided ACSEC but placed under its control by a third party specifically for the purposes of this program.

(1) Any unaddressed county which [~~who~~] is implementing or operating 9-1-1 service, or a RPC [~~COG~~] or emergency communication district applying on behalf of such a county are considered eligible.

(2)-(4) (No change.)

(5) Addressing Pool Funds may be reallocated by the Commission, at their discretion, to other participating counties with

the concurrence of the appropriate local 9-1-1 planning entity, until such time as the Pool Funds have been depleted.

(6) [~~(5)~~] For the purposes of this rule, the Addressing Pool Funds and 9-1-1 Funds may be used only for costs associated with eligible addressing activities.

(7) [~~(6)~~] A county must provide $1.00 of local funds for every $3.00 (25% match) allocated or authorized under this fund. However, if the project can be completed in accordance with subsection (b)(2) of this section, Definitions of Addressing Completion, and total costs of the project do not exceed 75% of the eligible costs, then no local funds for match are required.

(8) [~~(7)~~] Under no circumstances will funds be allocated or approved under this program that exceed total net funds needed as calculated by the cost-estimate worksheet.

(9) [~~(8)~~] In accordance with this policy, eligible counties or emergency communications districts which have already started addressing activities and incurred costs may request reimbursement of those documented addressing expenditures, if costs were incurred since January 1, 1991.

(10) [~~(9)~~] Funds under this program must be requested by a deadline to be established by the Commission. Funds may be awarded by the Commission following this established date on a case-by-case basis.

(11) [~~(10)~~] Where 9-1-1 funds are applied to the cost of addressing, addressing component costs may be capped by the Commission through the cost-estimate worksheet.

(d) Requesting Addressing Pool Funds and 9-1-1 Funds. A regional plan amendment from a RPC [~~COG~~] or a request from an emergency communications district is required as a means of requesting funds under this program.

(1) A regional plan amendment or request for funds from a COG must contain the following:

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

(C) An approved strategic plan budget [~~projected COG financial cash flow~~] if 9-1-1 funds are requested;

(D) If necessary, a request to amend the RPC [~~COG~~] administrative budget for additional staff, equipment or services whether through hiring or through personnel contract services; and

(E) A county commissioners court order in support of the addressing request where a RPC [~~COG~~] is performing addressing on behalf of the county.

(2) (No change.)

(3) Regional plan amendments and requests for funds under this program should be submitted by the RPC [~~COG~~] or the emergency communication district to the Commission five weeks prior to the scheduled Commission meeting at which the amendment or request will be considered.

(e) Reporting. Addressing funds will be allocated to RPCs [~~COGs~~] and emergency communication districts on a reimbursement basis. A performance and financial report is to be submitted to the Commission, at least quarterly, in accordance with established Commission policy. The performance report shall include phases of addressing activities for progress and shall be submitted along with each financial report requesting addressing funds. Where a RPC [~~COG~~] or an emergency communication district is the primary contractor but a county is providing services under this program, said reports shall be provided to the Commission prior to RPC [~~COG~~] or emergency communications district reimbursement of related county expenses. Counties, emergency communications districts, and RPCs [~~COGs~~] are required to follow local government statutes as they apply to competitive proposals for purchases of services and equipment.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903524
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–6933

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1 TAC §251.6

The Advisory Commission on State Emergency Communications (ACSEC) proposes an amendment to §251.6, concerning Guidelines for Strategic Plans, Amendments and Equalization Surcharge Allocation. The amendment provides language consistent with new legislation; provides for a biennial review of strategic plans; provides additional minimum standards for reporting; and updates administrative requirements and processes.

This section is amended as part of the agency's rule review of Chapter 251, Pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The proposed rule review of Chapter 251 was previously published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4255)

James D. Goerke, executive director, ACSEC, 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. Goerke also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be improved system for quantitative reporting and monitoring mechanisms for the 9-1-1 program statewide. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the amendment may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075, which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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

§251.6. Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation.

(a) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771, the Advisory Commission on State Emergency Communications (Commission) [~~(ACSEC)~~] may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. In accordance with §771.055, such service implementation shall be consistent with regional plans developed by regional planning commissions. These regional plans must meet standards established by the Commission [~~(ACSEC)~~] and "...include a description of how money allocated to the region under this chapter is to be allocated in the region." Section 771.057 addresses amendments to regional plans and indicates that such amendments may be adopted in accordance with procedure established by the Commission [~~(ACSEC)~~].

(b) Strategic Plan Levels. Regional strategic plans developed in accordance with Chapter 771, along with the commensurate allocation of the above described funds, shall reflect implementation consistent with the following three major strategic plan levels (in order of priority).

(1) Level I: 9-1-1 service generally associated with Automatic Number Identification (ANI), to include the following components and associated costs:

(A)-(E) (No change.)

(F) Maintenance/Repair [~~and repair~~] (ANI/TDD); and

(G) (No change.)

(2) Level II: 9-1-1 service generally associated with ANI, Selective Routing (SR), [~~and~~] Automatic Location Identification (ALI) and any other network and/or database system enhancement, to include the following components and associated costs:

(A)-(E) (No change.)

(F) Maintenance/Repair (CPE); [~~and)~~

(G) Capital recovery ([~~addressing and~~] telephone equipment); and

(H) Capital Recovery (addressing)

(3) Level III: Other 9-1-1 equipment, services and enhancements to same, to include, but not limited to the following components and associated costs:

(A)-(J) (No change.)

(K) Maintenance/Repair (ancillary equipment);

(L) [~~(K)~~] Capital Recovery (ancillary equipment [~~emergency power, recorders, training positions~~]); and

[~~(L) Maintenance (recorders, ancillary equipment)~~]

(M) Other.

(c) Strategic Plans. Regional strategic plans developed in compliance with Chapter 771 shall include a strategic plan that projects regional 9-1-1 service costs, and service fee and other non-equalization surcharge revenues at least two [~~three~~] years into the future; and program goals and strategies at least five years into the future. Within the context of §771.056(d), the Commission [~~(ACSEC)~~] shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(1) The Commission [~~(ACSEC)~~] may establish the format of strategic plans for the sake of identifying overall statewide requirements in its implementation.

(2) Strategic plans shall be reviewed and amended, as appropriate, on a [~~an~~] biennial [~~annual~~] basis.

(3) Each biennial [~~annual~~] review and update of strategic plans shall reflect a reconciliation of all actual implementation costs by component incurred for the year involved against projected strategic plan costs and revenues.

(4) Strategic plans shall be consistent with the three major implementation priority levels identified above, in subsection (b)(1), (2) and (3) of this section, and all applicable Commission [~~(ACSEC)~~] policies and rules.

(5) A regional planning commission shall submit financial and performance reports at least quarterly on a schedule to be established by the Commission [~~(ACSEC)~~]. The financial report shall identify actual implementation costs by county, strategic plan priority level and component. The performance report shall be submitted along with each financial report requesting 9-1-1 funds and shall reflect the progress of implementing the region's strategic plan, including the status of equipment, services and program deliverables, in a format to be determined by the Commission.

(d) Amendments to Regional Strategic Plans.

(1) A regional planning commission may make changes to its approved regional strategic plan to accommodate unanticipated requirements and/or to prevent disruption of its implementation schedule, contingent upon compliance with all Commission [~~(ACSEC)~~] policies and procedures.

(A) The changes do not require additional equalization surcharge funds; and

(B) The changes are consistent with all Commission [~~(ACSEC)~~] policies and procedures.

(2) Changes made to the regional plan must be reported in writing to the Commission [~~(ACSEC)~~] within 15 working days of making the change. The documentation required for changes will be an amended budget, narrative, [~~and~~] related worksheets and a letter indicating executive approval of the amendment.

(3) Emergency situations requiring amendments to regional plans that require additional funding may be presented to the Commission [~~(ACSEC)~~] for review and consideration contingent upon the availability of such funds within level priorities as established by the Commission.

(e) Allocation of Equalization Surcharge Funds.

(1) Consistent with this rule, the Commission [~~(ACSEC)~~] shall allocate, by agreement, equalization surcharge funds to regional planning commissions and emergency communication districts based upon statewide strategic plan and district needs coupled with the projected availability of such funds over a two [~~three~~] year period.

(2) Equalization surcharge funds shall be allocated first to eligible recipients requiring such funds for administrative budgetary purposes, followed by Level I, II, and III activities in that order.

(3) If sufficient equalization surcharge funds are not available to fund all regional planning commission strategic plan and district requests, funds shall be allocated to provide a consistent level of 9-1-1 service throughout the State of Texas in accordance with the priority levels described. Such allocation methods may include, but are not limited to, one or more of the following:

(A) In reverse order of priority, reducing the number of priority level components supported with equalization surcharge funds;

(B) Requesting that regional [~~appropriate~~] strategic plans [~~to~~] be adjusted to allow for more implementation time as appropriate; and/or

(C) In order of priority, proportionally allocating available funds among requesting agencies.

(4) The Commission [~~(ACSEC)~~] may elect to hold a balance of equalization surcharge funds in reserve for emergencies and other contingencies.

(f) Funding Parameters. The Commission will look favorably on plan amendments for tandem and/or database service arrangements and ancillary equipment that will improve the effectiveness and reliability of 9-1-1 call delivery systems. This will include the following when the equipment is for 9-1-1 call delivery: surge protection devices, uninterrupted power source (UPS), power backup, voice recorders, paging systems for 9-1-1 call delivery, security devices, and other back-up communication services.

(1) Paging Systems. Funding for the paging systems may be approved when such systems are the most effective means of 9-1-1 call delivery and they do not replace other paging or radio alerting systems. Funding for paging will be limited to systems, where alternative systems or the systems now in use cause significant delay in 9-1-1 call delivery and where existing radio systems can be modified to accommodate paging. Funding for pagers (receivers) will be limited to three, providing pagers to only [~~those~~] necessary [~~to alert the~~] core responders within an organization (e.g., in a 15-member volunteer emergency medical group, only the on-call ambulance driver and one or two attendants would be furnished pagers).

(2) Voice Recording Equipment. Voice loggers may be approved when the primary use of the equipment is in support of the 9-1-1 call-taking and call-delivery function. Extra capacity on such systems may be used for other public safety functions (such as dispatch); however, 9-1-1 funding will not be authorized for systems whose capacity clearly exceed actual or anticipated 9-1-1 requirements. Shared funding of larger systems to accommodate both a 9-1-1 PSAP and a PSAP operating agency's other needs will be considered on a case-by-case basis. Other considerations include:

(A) The Commission will normally fund voice recording capability in a PSAP to record the conversation on each answering position used to answer emergency calls on a regular basis. (This means one recording channel per 9-1-1 answering position instead of one channel per incoming line.)

(B)-(F) (No change.)

(G) When the operator of a 9-1-1 PSAP and the providers of emergency services desire to use the same recording equipment funded by Regional Strategic Plan, the following guidelines will apply to determine the amount to be funded by the Commission:

(i) (No change.)

(ii) When the PSAP requires a given size of recording equipment, and the other agency requires additional channels, the Commission will fund the size of recording equipment needed to record only the delivery of 9-1-1 calls, and the other agency will fund all additional equipment.

(iii) When the recording requirements of the other agency requires additional features or capabilities than would be required by the PSAP alone, the Commission will fund the equivalent amount of the system needed to serve the 9-1-1 functions of the PSAP alone. For instance, if the PSAP could use a recording system to record the delivery of 9-1-1 calls, but another agency needs to record a radio channel that requires the capacity of a larger recorder, the Commission will fund the equivalent cost of the smaller system.

(H)-(I) (No change.)

(J) The Commission will consider funding of recording capabilities greater than those suggested by the guidelines when sufficient justification is provided as part of a Regional Strategic Plan.

(g) Emergency Power Equipment. Each PSAP location should be evaluated by the RPC to determine if an emergency power system is required to insure the ability to answer 9-1-1 calls in the event that the standard power supply is interrupted. A PSAP that receives a relatively small number of emergency calls per day may be able to provide acceptable service without the availability of ANI or ALI for short periods of time. If the same PSAP is located in a location that is subject to prolonged power outages, it may need emergency power sources. Other considerations include:

(1) Where conditions exist that indicate a need for emergency power systems to support 9-1-1 call delivery, UPS should be considered as the emergency power system. Emergency generators (power backup) should be approved only in locations with a documented history of or potential for extended interruptions of commercial power supplies. Generally, 9-1-1 funding will not be used to provide both a generator [~~emergency power~~] and UPS. At least 75% of the capacity of any UPS system or generator funded should directly support an existing (or planned) 9-1-1 system.

(2) Each request for UPS must include a worksheet showing the calculations used to determine the system size and batteries required. This worksheet must identify all equipment to be powered and the operating voltage and current drain of each piece of equipment. The request for UPS must identify the load capacity of the system requested and the length of time the batteries will operate the PSAP 9-1-1 equipment. The request should also indicate whether the 9-1-1 equipment has any built-in UPS capability.

(3) The length of time that a [~~an~~] UPS battery will be required to provide emergency power is a major factor in determining the cost of the UPS system. Each request for UPS must provide information justifying the size of the batteries requested. Information concerning the history of power failures at the PSAP location and the average time to restore power should be obtained from the local power company.

(4) If the history of power failures, or the expected restoration [~~restoral~~] time, is more than can be economically justified for UPS batteries, an emergency generator [~~backup power~~] can be considered. Any request for an emergency generator, in addition to an UPS, shall include a comparison of the cost of an UPS [~~system~~] with sufficient batteries to the cost of the combination of the UPS and an emergency generator [~~backup power~~].

(5) There may be circumstances that justify the installation of an emergency generator (backup power), in addition to an UPS, as the primary system for a PSAP location. In these cases, the request for the emergency generator [~~power~~] must include an explanation and comparison of the relevant costs.

(6) (No change.)

(7) Funding may be approved for surge protection devices when they are used for protection of 9-1-1 specific electronic equipment. Documented justification must be provided.

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

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

(7) Regional Strategic Plan. Each regional planning commission shall develop and plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The service must meet the standards established by the Commission [~~(ACSEC)~~].

(8)-(9) (No change.)

(10) Strategic Plan. As part of a regional strategic plan, a document identifying 9-1-1 equipment and related activity, by strategic plan component, required to support planned levels of 9-1-1 service within a defined area of the state. The strategic plan shall cover [~~normally covers at least~~] a two [~~three~~] year financial planning period and a five year plan outlining regional goals and strategies, and specifically projects 9-1-1 implementation costs and revenues associated with the above including equalization surcharge requirements.

(A) (No change.)

(B) Strategic Plan Level. A [~~An~~] Commission [~~(ACSEC)~~] established statewide implementation priority generally associated with a level of 9-1-1 service - e.g., Automatic Number Identification, ANI.

(11)-(12) (No change.)

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903523
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–6933

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Part XV. Texas Health and Human Services Commission

Chapter 355. Medicaid Reimbursement Rates

Subchapter A. Cost Determination Process

1 TAC §355.101, §355.105

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.101, concerning Introduction, and §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures, in its Medicaid Reimbursement Rates chapter. This proposal is submitted simultaneously with a proposal by the Texas Department of Human Services (DHS) to amend corresponding provisions of Title 40, Chapter 20, of the Texas Administrative Code. The purpose of the amendments is to comply with changes in state and federal laws. One proposed amendment reflects a change in the Medicaid program rate approval process. The proposed amendment reflects the current process in which the Texas Board of Human Services no longer recommends rates to HHSC, because HHSC was assigned responsibility for Medicaid rate determination by a change in state law in House Bill 2913, 75th Legislature. Since rates for most non-Medicaid payment rates have a Medicaid counterpart, approval of the Medicaid rates by HHSC effectively determines the non- Medicaid counterpart rates. Thus, a proposed amendment provides that non-Medicaid payment rates will be set to coincide with the counterpart Medicaid rates. A proposed amendment also removes references to the federal Boren Amendment, which formerly applied to the nursing facility program, because it is no longer in effect as a result of a change in federal law.

Don Green, Chief Financial Officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Commissioner Don Gilbert has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the rules will reflect the changes in federal and state law and that providers will have defined for them the payment rate approval process. There will be no effect on small businesses, because the amendments reflect HHSC and DHS current Medicaid rate approval processes, based on changes in state law; and establish consistency in non-Medicaid rate approval processes. The amendments also delete references to the federal Boren Amendment, which is no longer in effect as a result of a change in federal law. No changes in practice are required of any businesses, large or small. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

For further information, contact local offices of DHS or Kathy Hall at (512) 438-3702 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-200, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas, 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Government Code, §531.033, which authorizes the commissioner of the Health and Human Services Commission to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes the commission as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

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

§355.101. Introduction.

(a)-(b) (No change.)

(c) The Texas Department of Human Services (DHS) reimburses providers for contracted client services through reimbursement amounts determined as described in this chapter and in reimbursement methodologies for each program. Non-Medicaid, statewide, uniform reimbursements and reimbursement ceilings are approved by the Texas Department [~~Board~~] of Human Services [~~(board)~~]. Medicaid, statewide, uniform reimbursements, and reimbursement ceilings are approved by [~~The board recommends for approval to~~] the Texas Health and Human Services Commission (HHSC) [~~medical assistance or Medicaid reimbursements that are uniform by class~~]. In Medicaid programs where reimbursements are contractor-specific, [~~the board~~

~~recommends for approval to~~] the HHSC approves the reimbursement parameter dollar amounts, e.g., ceilings, floors, or program reimbursement formula limits. In approving reimbursement amounts DHS or the HHSC [~~the board~~] takes into consideration staff recommendations based on the application of formulas and procedures described in this chapter and in reimbursement methodologies for each program. However, DHS or the HHSC [~~the board~~] may adjust staff recommendations when DHS or the HHSC [~~the board~~] deems such adjustments are warranted by particular circumstances likely to affect achievement of program objectives, including economic conditions and budgetary considerations. [~~For the nursing facility program subject to the federal Boren Amendment, any downward reimbursement adjustments may not exceed the amount of any mark-up or margin over projected costs. For the nursing facility program, this limitation ensures that downward reimbursement adjustments do not reduce reimbursement below the costs which must be incurred by efficient and economic providers meeting federal and state standards.~~] Medicaid reimbursement methodology rules are developed and recommended for approval [~~by the board~~] to the HHSC. The HHSC has oversight authority with respect to the state's Medicaid rules.

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

§355.105. General Reporting and Documentation Requirements, Methods, and Procedures.

(a)-(c) (No change.)

(d) Amended cost report due dates. DHS accepts submittal of provider-initiated or DHS-requested amended cost reports as follows.

(1) Provider-initiated amended cost reports must be received no later than the date in subparagraph (A) or (B) of this paragraph, whichever occurs first. Amended cost reports received after the required date have no effect on the reimbursement determination. Amended cost report information that cannot be verified will not be used in reimbursement determinations. Provider-initiated amended cost reports must be received no later than the earlier of:

(A) (No change.)

(B) for Medicaid programs, 30 days prior to the public hearing on proposed reimbursement or reimbursement parameter amounts; and for non-Medicaid programs 30 days prior to the administrative closing of the cost report database for reimbursement determination [~~45 days, prior to the DHS board meeting to approve reimbursement or reimbursement parameter amounts~~].

(2) (No change.)

(e)-(f) (No change.)

(g) Public hearings.

(1) Uniform reimbursements. For Medicaid programs where reimbursements are uniform by class of service and/or provider type, DHS and the HHSC will hold a public hearing on proposed reimbursements before the HHSC [~~Texas Board of Human Services (board)~~] approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the [~~DHS's~~] proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed statewide uniform Medicaid reimbursements will be made available to the public. This material will include the proposed reimbursements, the inflation adjustments used to determine them, and the impact on reimbursements of the major cost limits. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a [~~written~~] summary of the comments made during the public hearing will be presented to the HHSC [~~board~~].

(2) Contractor-specific reimbursements. For Medicaid programs in which [~~In programs where~~] reimbursements are contractor-specific, DHS and the HHSC will hold a public hearing on the reimbursement determination parameter dollar amounts (e.g., ceilings, floors, or program reimbursement formula limits) before the HHSC [~~board~~] approves parameter dollar amounts. The purpose of the hearing is to give interested parties an opportunity to comment on the [~~DHS's~~] proposed reimbursement parameter dollar amounts. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursement parameter dollar amounts. At least ten working days before the public hearing takes place, material pertinent to the proposed reimbursement parameter dollar amounts will be made available to the public. This material will include the proposed reimbursement parameter dollar amounts, the inflation adjustments used to determine them, and the impact on the reimbursement parameter dollar amounts of the major cost limits. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a [~~written~~] summary of the comments made during the public hearing will be presented to HHSC [~~the board~~].

(h) (No change.)

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903399
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Proposed date of adoption: September 1, 1999
For further information, please call: (512) 438-3765

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TITLE 7. BANKING AND SECURITIES

Part II. Texas Department of Banking

Chapter 25. Prepaid Funeral Contracts

Subchapter B. Regulation of Licenses

7 TAC §25.11

The Texas Department of Banking (the "department") proposes an amendment to §25.11, concerning record-keeping requirements for trust-funded contracts.

The proposed amendment to §25.11 will simplify and clarify record-keeping requirements by deleting obsolete requirements, adding explanations and other details, specifying optional records that can satisfy a requirement, and by rewording specifications.

Stephanie Newberg, Director, Special Audits Division, Texas Department of Banking, has determined that, for each year of the first five years the section is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering this section as amended.

Ms. Newberg also has determined that, for each year of the first five years the section is in effect as amended, the public benefit anticipated as a result of the adoption of this section is clarification of the section's meaning, consistency in requirements pertaining to related provisions; and simplification of record-keeping requirements without diminishing safeguards to the public. No economic cost will be incurred by a person required to comply with this section, and there will be no effect on small businesses.

Comments regarding the proposal may be submitted to Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to sharon.gillespie@banking.state.tx.us.

The amendment is proposed pursuant to Finance Code, §154.051(b)(2), which authorizes the department to adopt reasonable rules concerning the keeping and inspection of records relating to the sale of prepaid funeral benefits.

Finance Code, Chapter 154, is affected by the proposed section.

§25.11. Record Keeping Requirements for Trust-Funded Contracts.

(a) (No change.)

(b) General file. A permit holder subject to this section must maintain general files regarding its prepaid funeral benefits operations. Such files may be maintained in hard-copy form or on microfiche or in an electronic database from which they may be reasonably retrieved in hard-copy form. These files must contain the original or a copy of the following:

(1) [~~the initial permit application and~~] the latest approved renewal permit application for the permit holder and its last filed annual report, if any;

(2) (No change.)

(3) each contract form approved for sales transacted within the last three years unless no outstanding contracts exist using such form [~~after the effective date of this section for so long as there are outstanding contracts using such form~~];

(4) (No change.)

(5) the most current consolidated financial statement or, in lieu thereof, the most current financial records and/or tax returns [~~of the permit holder or, if not available, of the parent corporation~~];

(6) (No change.)

[~~(7) the register run made at the close of the preceding quarter for unmatured contracts, which runs shall be retained for a period of three years;~~]

(7) [~~(8)~~] all examination reports made by the department within the past three years;

(8) [~~(9)~~] all trust agreements approved by the department within the past three years and all trust agreements that are still active, including trustee fee schedules covering deposited funds for the last three years;

(9) [~~10~~] all investment plans and reports submitted to the department within the past three years and all such plans and reports that apply to active trust funds;

(10) [~~11~~] all preneed abandoned property reports filed with the department and the [~~Texas~~] State Comptroller of Public Accounts [~~Treasurer~~] within the past three years;

(11) [~~12~~] records of the trustee/depository, balanced at least quarterly to the total of the control ledger and the principal of the individual ledgers, reflecting at a minimum all savings account statements, certificate of deposit records (both principal and interest), and/or trust statements for the past three years; and

[~~(13) a listing of investments that, for the past three years, do not meet the criteria established in Finance Code, §154.258, updated at least quarterly; and~~]

(12) [~~(14)~~] all correspondence with the department within the past three years, including but not limited to all transfer of funds approval letters issued by the department.

(c) Individual files.

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

(3) Each file pertaining to a matured contract must be retained for three years. Each such file must contain copies of all documents required for an outstanding contract, a completed department withdrawal form or evidence of department withdrawal approval, [~~where required,~~] and a computation of earnings withdrawal, if applicable, unless computation procedures are otherwise documented in the general file. Each matured contract file must also contain [~~a copy of~~]:

(A) the original or copy of the completed at-need [~~at need~~] contract or funeral purchase agreement or an itemization of services performed and merchandise transferred signed by the decedent's personal representative; or, if the preneed funeral contract relates only to the opening and closing of a grave, the cemetery interment order, which must denote the balance due on the preneed contract, if any, and any preneed discount;

(B) a [~~the~~] certified death certificate or a copy of a certified original death certificate; and

(C) if the service is performed by an entity other than the permit holder or a permit holder related by common ownership, a statement from the purchaser or purchaser's representative requesting the delivery of funds to the servicing funeral home [~~the certificate of performance of contract services executed by the decedent's personal representative~~] and evidence of payment to the servicing funeral home [~~e.g., a copy of the payment check or check stub~~];

(4) Each file pertaining to a canceled contract must be retained for three years. Each such file must contain copies of all documents required for an outstanding contract, [~~and~~] a completed departmental [~~department~~] withdrawal form or evidence of departmental [~~department~~] withdrawal approval, [~~where required, and~~] a computation of earnings withdrawal, if applicable, unless otherwise documented in the general file, and evidence of payment of the cancellation benefit. [~~Each canceled contract file must also contain a copy of:~~]

[~~(A) the purchaser's original notice of cancellation; and~~]

[~~(B) evidence of payment of the cancellation benefit, e.g., a copy of the payment check or check stub.~~]

(d) Other records. Each permit holder subject to this section must [~~shall~~] maintain the following records regarding its prepaid funeral benefits operations in hard-copy form, or on microfiche or in an electronic database from which they may be reasonably retrieved in hard-copy form:

(1) an historical contract register, maintained either chronologically or by contract number, indicating:

(A)-(E) (No change.)

(F) final disposition of the contract, including notations as to whether the contract is matured or canceled, the date of withdrawal from the depository, and the amount of funds withdrawn; or, in lieu thereof, a record separate from the register, listing matured and canceled contracts for the examination period and setting out the contract number, contract purchaser, date of withdrawal from the depository, and amount of the withdrawal;

(2)-(4) (No change.)

(5) a control ledger for all purchasers, balanced at least quarterly to the principal total and contract count total of the individual ledgers and in total to the records of the trustee/depository, reflecting:

(A) the net cumulative total of outstanding contracts [~~issued, matured and canceled~~];

(B)-(G) (No change.)

(e)-(h) (No change.)

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903485
Everett D. Jobe
General Counsel
Texas Department of Banking
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 475–1300

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TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

10 TAC §§9.1, 9.2, 9.4, 9.7, 9.9, 9.10, 9.11

The Texas Department of Housing and Community Affairs (TDHCA) proposes amendments to §§9.1, 9.2, 9.4, 9.7, 9.9, 9.10, and 9.11 concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP).

The amendments are being proposed to establish the standards and procedures by which TDHCA will allocate 1999 and 2000 fiscal years' community development, planning capacity building, and housing rehabilitation funds and fiscal year 1999 economic development, colonia, housing infrastructure, and TCDP Small Town Environment Program funds. The amendments are being proposed to make changes to the application and selection criteria for the program fund categories.

Ruth Cedillo, director of the Texas Community Development Program, has determined that for the period that the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Cedillo also has determined that for the period that the sections are in effect, the public benefit as a result of enforcing the sections will be the equitable allocation of CDBG non-entitlement area funds and disaster recovery initiative funds to eligible units of general local government and eligible Indian tribes in Texas. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Anne Paddock, Deputy General Counsel, Texas Department of Housing and Community Affairs, 507 Sabine, P.O. Box 13941, Austin, Texas 78711-3941 or by e-mail at the following address *apaddock@tdhca.state.tx.us*.

The amendments are proposed under Texas Government Code, Chapter 2306, §2306.098, which provides TDHCA with the authority to allocate Community Development Block Grant non-entitlement area funds to eligible counties and municipalities according to department rules.

Texas Administrative Code, Title 10, Part I, Chapter 9, is affected by the proposed amendments to §§9.1, 9.2, 9.4, 9.7, 9.9, 9.10, and 9.11.

§9.1. General Provisions.

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

(1) Applicant–A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the Department or to the Texas Department of Economic Development (TDED).

(2)-(18) (No change.)

(b)-(d) (No change.)

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §5301 et seq.) is ineligible for funding under the Texas Community Development Program. Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current Texas Community Development Program application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses; pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a Texas Community Development Program contract; prisons/detention centers; government supported facilities; and racetracks. [~~prisons (unless the prison is located on a federal military installation closed by the federal government since 1989); state-supported facilities (unless the activity addresses job creation/retention by a state-supported facility located on a federal military installation closed by the federal government since 1989); and racetracks.~~]

(f)-(m) (No change.)

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) Obligate at least 50% of the total funds awarded under a contract with a 24 month contract period (except for Texas Capital Fund contracts, housing fund contracts, colonia self-help center contracts, and small towns environment program fund contracts) executed at least 12 months prior to the current program year application deadline. This paragraph does not apply to disaster relief fund applicants.

(2) Obligate at least 50% of the total funds awarded under a contract with a thirty-six month contract period (except for Texas Capital Fund contracts and colonia self-help center contracts) executed at least 18 months prior to the current program year application deadline. This paragraph does not apply to disaster relief fund applicants.

(3) [~~(2)~~] Expend all but the reserved audit funds, or other reserved funds that are pre-approved by Texas Community Development Program staff, awarded under a contract with a contract period of 24 months (except for Texas Capital Fund contracts, colonia self-help center contracts, and small towns environment program fund contracts) that has been in effect for [~~executed~~] at least 24 months prior to the current program year application deadline and submit to the Department a certificate of completion required by the most recent edition of the Texas Community Development Program Project Implementation Manual which documents the expenditure of all contract funds with the exception of any contract funds reserved for audits and other reserved funds that are pre-approved by Texas Community Development Program staff. This paragraph does not apply to disaster relief fund applicants.

(4) Texas Capital Fund (TCF) applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted. If an existing contract requires an extension beyond the initial term, TDED must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDED must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the Texas Capital Fund Implementation Manual).

[~~(3) Expend all but the reserved audit funds, or other reserved funds that are pre-approved by Texas Department of Economic Development staff, awarded under a Texas Capital Fund contract executed at least 36 months prior to application deadlines and submit to the Texas Department of Economic Development the certificate of completion required by the most recent edition of the Texas Community Development Program Project Implementation Manual which documents the expenditure of all contract funds with the exception of any contract funds reserved for audits and other reserved funds that are pre-approved by Texas Department of Economic Development staff.~~]

(5) [~~(4)~~] Expend all but the reserved audit funds or other reserved funds that are pre-approved by Texas Community Development Program staff, awarded under a contract (except for Texas Capital Fund contracts, colonia self-help center contracts, and colonia demonstration fund projects) with a contact period of 36 months and that has been in effect for at least 36 months prior to the current program year application deadline, and submit to the Department a certificate of completion required by the most recent edition of the Texas Community Development Program Project Implementation Manual which documents the expenditure of all contract funds with the exception of any contract funds reserved for audits and other reserved funds that are pre-approved by Texas Community Development Program staff. This paragraph does not apply to disaster relief fund applicants.

(o)-(p) (No change.)

(q) Revolving loan funds. A Revolving Loan Fund established through program income recovered from a Texas Community Development Fund contract must meet the requirements for Revolving Loan Funds described in the Texas Community Development Program Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, Texas Community Development Program contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Department.

§9.2. Community Development Fund.

(a) (No change.)

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 1999 and 2000 [~~1997 and 1998~~] program years pursuant to regional competitions held during the 1999 [~~1997~~] program year. Applications for funding must be received by the Texas Community Development Program by 5:00 p.m. on the date specified in the most recent application guide for this fund.

(c) Allocation plan.

(1) (No change.)

(2) Each state planning region is provided with a 1999 [~~1997~~] program year target allocation and a 2000 [~~1998~~] program year target allocation of funds for applications in its region that are ranked through the 1999 [~~1997~~] program year regional competitions in accordance with a shared scoring system involving the Department and the regional review committees. Where the remainder of the 1999 [~~1997~~] program year target allocation is insufficient to completely fund the next highest ranked applicant, the applicant receives complete funding of the original grant request through a combination of 1999 and 2000 [~~1997 and 1998~~] program year funds. Where the remainder of the 2000 [~~1998~~] program year target allocation is insufficient to completely fund the next ranked application, the Department works with the affected applicant to determine whether partial funding is feasible. If partial funding is not feasible, the remaining funds from all the target allocations are pooled to fund projects from among the highest ranked, unfunded applications from each of the 24 state planning regions. Selection criteria for such applications will consist of the selection criteria scored by the department under this fund. Marginal applicants' community distress scores are recomputed based on the applicants competing in the marginal pool competition only.

(d) Selection procedures.

(1)-(4) (No change.)

(5) Following a final technical review, the Department staff presents the 1999 [~~1997~~] program year and the 2000 [~~1998~~] program year funding recommendations to the state review committee. Department staff make a site visit to each of the applicants recommended for funding prior to the completion of contract agreements.

(6) (No change.)

(7) The executive director of the Department reviews the 1999 [~~1997~~] final recommendations for project awards and announces the contract awards.

(8) Upon announcement of the 1999 [~~1997~~] program year contract awards, the Department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(9) When the 2000 [~~1998~~] program year Texas Community Development Program allocation becomes available, the executive director of the department reviews the 2000 [~~1998~~] program year final recommendations for project awards and announces the contract awards.

(10) Upon announcement of the 2000 [~~1998~~] program year contract awards, the department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(e) Selection criteria. The following is an outline of the selection criteria used by the Department and the regional review committees for scoring applications under the community development fund. Seven hundred points are available.

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

(3) Project impact (total–195 points).

(A) Ten of the 195 points available are awarded to applicants which did not receive a community development fund or a housing rehabilitation fund contract award during the 1997 or 1998 program years [~~1996 program year~~].

(B) Ten of the 195 points available are awarded to applicants that have closed all previously awarded community development fund contracts, with the exception of 1997 and 1998 [~~1996~~] contracts, by the application deadline date. A previously awarded community development fund contract is considered to be closed when: all of the Texas Community Development Program funds needed to complete the contract activities, except for the reserved audit funds and other reserved funds that have been pre-approved by Texas Community Development Program staff, have been expended; and the certificate of completion required by the most recent edition of the Texas Community Development Program Project Implementation Manual has been submitted to the Department. The certificate of completion must be complete and must meet Department standards for acceptability.

(C) Of the remaining 175 points available, each application is scored within a point range based on the application activities. Multi-activity projects which include activities in different scoring ranges will receive a combination score within the possible range. Information submitted in the application or presented to the regional review committees is used by a committee composed of staff of the Department to generate scores on this factor. The point ranges used for project impact scoring are as follows:

(i) water activities, sewer activities, and housing activities (145 to 175 points);

(ii) eligible public facilities in a defense economic readjustment zone (145 to 175 points);

(iii) [~~(ii)~~] street paving, drainage, flood control and handicapped accessibility activities (130 to 150 points);

(iv) [~~(iii)~~] gas facilities, electrical facilities, solid waste disposal, fire protection, and health clinic activities (125 to 145 points);

(v) [~~(iv)~~] community center, senior citizens center, social services center, demolition/clearance, and code enforcement activities (115 to 135 points);

(vi) [~~(v)~~] jail facilities and detention facilities (105 to 125 points);

(vii) [~~(vi)~~] all other eligible activities (85 to 115 points).

(D) Other factors that will be evaluated by Department staff in the assignment of project impact scores within the point ranges for activities include, but are not limited to, the following:

(i)-(v) (No change.)

(vi) projects which include self-help methods (volunteer labor, donated materials, donated equipment, etc.) to significantly reduce the project cost or to significantly increase the proposed improvements are given additional consideration; [~~.~~]

(vii) projects designed to address drought-related water supply problems are generally given additional consideration;

(viii) water and sewer projects that provide first-time water or sewer service through a privately-owned for-profit utility or an expansion/improvement of the existing water or sewer service provided through a privately-owned for-profit utility may, on a case-by-case basis, receive less consideration than the consideration given to projects providing these services through a public nonprofit organization.

(4) Matching Funds (total–60 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored depends on the project type and the beneficiary population served. If the project benefits residents of the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the residents of the entire unincorporated area of the county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the participating applicants according to the 1990 census. Applications for housing rehabilitation and for affordable new permanent housing for low- and moderate-income persons receive the 60 points without including any matching funds. This exception is for housing activities only. Sewer or water

service line/connections are not counted as housing rehabilitation. Demolition/clearance and code enforcement, when done in the same target area are counted as part of the housing rehabilitation activity. When demolition/clearance and code enforcement are proposed without housing rehabilitation activities, then the match score is still based on actual matching funds committed by the applicant. Applications which include additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities. Program funds cannot be used to install street/road improvements in areas that are not currently receiving water or sewer service from a public or private service provider unless the applicant provides matching funds equal to at least 50% of the total construction cost budgeted for the street/road improvements. This requirement will not apply when the applicant provides assurance that the street/road improvements proposed in the application will not be impacted by the possible installation of water or sewer lines in the future because sufficient easements and rights-of-way are available for the installation of such water or sewer lines. The terms used in this paragraph are further defined in the current application guide for this fund.

(A) Applicants with populations equal to or less than 750 according to the 1990 census:

(i) match equal to or greater than 5.0% of grant request–60;

(ii) match at least 4.0% but less than 5.0% of grant request–40;

(iii) match at least 3.0% but less than 4.0% of grant request–20;

(iv) match at least 2.0% but less than 3.0% of grant request–10;

(v) match less than 2.0% of grant request–0.

(B) Applicants with populations equal to or less than 1,500 but over 750 according to the 1990 census:

(i) match equal to or greater than 10% of grant request–60;

(ii) match at least 7.5% but less than 10% of grant request–40;

(iii) match at least 5.0% but less than 7.5% of grant request–20;

(iv) match at least 2.5% but less than 5.0% of grant request–10;

(v) match less than 2.5% of grant request–0.

(C) Applicants with populations equal to or less than 5,000 but over 1,500 according to the 1990 census:

(i) match equal to or greater than 15% of grant request–60;

(ii) match at least 11.5% but less than 15% of grant request–40;

(iii) match at least 7.5% but less than 11.5% of grant request–20;

(iv) match at least 3.5% but less than 7.5% of grant request–10;

(v) match less than 3.5% of grant request–0.

(D) Applicants with populations over 5,000 according to the 1990 census:

(i) match equal to or greater than 20% of grant request–60;

(ii) match at least 15% but less than 20% of grant request–40;

(iii) match at least 10% but less than 15% of grant request–20;

(iv) match at least 5.0% but less than 10% of grant request–10;

(v) match less than 5.0% of grant request–0.

(5) (No change.)

§9.4. Planning/Capacity Building Fund.

(a) (No change.)

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 1999 and 2000 [~~1997 and 1998~~] program years pursuant to a statewide competition held during the 1999 [~~1997~~] program year. Applications for funding from the 1999 and 2000 [~~1997 and 1998~~] program year allocations must be received by the Texas Community Development Program by 5:00 p.m. on the date specified in the most recent application guide for this fund.

(c) Selection procedures. Scoring and the recommended ranking of projects is done by staff and a committee composed of Department staff with input from the regional review committees. The application and selection procedures consist of the following steps.

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

(7) The Department staff submits the 1999 [~~1997~~] program year and 2000 [~~1998~~] program year funding recommendations to the state review committee. The state review committee reviews the project rankings and provides funding recommendations to the executive director of the Department.

(8) The executive director of the Department reviews the 1999 [~~1997~~] program year funding recommendations and announces the contract awards.

(9) Upon the announcement of the 1999 [~~1997~~] program year contract awards, the Department staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(10) When the 2000 [~~1998~~] program year Texas Community Development Program allocation becomes available, the executive director of the department reviews the 2000 [~~1998~~] program year funding recommendations and announces the contract awards.

(11) Upon the announcement of the 2000 [~~1998~~] program year contract awards, the department staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(d) Selection criteria. The following is an outline of the selection criteria used by the Department for selection of the projects under the planning/capacity building fund. Four hundred thirty points are available.

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

(3) Planning strategy and products (total 275 points).

(A) Previous planning (50 points).

(i) An applicant which has not previously received a planning/capacity building contract or an applicant which has received a planning/capacity building fund contract prior to the 1990 [~~1989~~] program and has not received any subsequent planning/capacity building fund contracts –50 points.

(ii)-(iii) (No change.)

(B) (No change.)

§9.7. Texas Capital Fund.

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements program, projects may also qualify if they meet the national program objective of aiding in the prevention or elimination of slum or blighted areas.

(1) For an activity that creates/retains jobs, the city/county and business must document that at least 51% of the jobs are or will be held by low and moderate income persons. For purposes of determining whether a job is or will be held by a low or moderate income person or not, the following options are available. [~~All jobs being created or retained must primarily benefit low and moderate income persons. A minimum of 51% of all of the jobs ultimately created or retained must be for persons who at the time of their employment had total family income below the low and moderate income limit for the county where the development occurred.~~]

(A) The business must survey all persons filling a created/retained job. Persons filling a created job should be surveyed at the time of employment. Persons holding a retained job should be surveyed prior to application submission. This determination is based on the family's size and previous 12 month income and is normally documented on the Family Income/Size Certification form, which is filled out, dated and signed by employees; or

(B) The person(s) employed by the business for created/retained jobs may be presumed to be a low or moderate income person if the person resides within a census tract or block numbering area that either is part of a Federally-designated Empowerment Zone or Enterprise Community or the person(s) reside in a census tract or block numbering area that meets the following criteria:

(i) The census tract or block numbering area has a poverty rate of at least 20% as determined by the most recently available decennial census information;

(ii) The census tract or block numbering area does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30% as determined by the most recently available decennial census information; and

(iii) The census tract or block numbering area shows evidence of pervasive poverty and general distress by meeting at least one of the following standards:

(I) All block groups in the census tract have poverty rates of at least 20%; or

(II) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20%; or

(III) Has at least 70% of its residents who are low- and moderate-income persons; or

(IV) The assisted business is located within a census tract or block numbering area that meets the requirements of subparagraph (B) of this section, and the job under consideration is to be located within that census tract or block numbering area.

(2) (No change.)

(3) A firm financial commitment from all funding sources other than the United States Department of Commerce [~~Economic Development Administration~~] or the United States Department of Agriculture is required upon submission of an application.

(4) The leverage ratio between all funding sources to [~~and~~] the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of $750,000 or less (except for the main street improvements program in which case a 0.5:1 match for cities with a population of less than 5,000 is acceptable [~~and when a ratio less than 1:1 is approved by Texas Department of Economic Development staff~~]) , 4:1 for awards of $750,001 to $1,000,000, and 9:1 for awards of $1,000,001 to $1,500,000.

(5) In order for an applicant to be eligible, the cost per job calculation must not exceed $25,000 for awards of $750,000 or less; $10,000 for awards of $750,001 to $1,000,000; and $5,000 for awards of $1,000,001 to $1,500,000. These requirements do not apply to the Main Street Program. [~~under the low and moderate income persons benefit national program objective, the Texas Capital Fund cost per job calculation must not exceed $25,000.~~]

(6) No financial assistance will be provided to projects involved in the relocation of any industrial or commercial plant, facility or operation, from one state to another state, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. No assistance will be provided for projects intended to facilitate the relocation of any industrial or commercial plant, facility or operation [~~plants or facilities~~] from one unit of general local government within Texas to another unit of general local government within Texas unless a 10% net gain of jobs will occur and one or more of the following requirements has been met prior to submitting an application for consideration under this section:

(A) Business to relocate with approval of current locality. Local government must provide written documentation within the application, verifying the chief elected official (mayor or judge) of the unit of local government from which the business is relocating supports and approves the relocation proposal. A written agreement between the two local governments involved in the business relocation is preferred.

(B) Business to relocate out-of state. Business must provide written documentation between business and out-of-state contact verifying the business has secured out-of-state location.

(C) Local government notification with no response. Local government must provide written documentation that a letter has been mailed (by registered mail) to the local government from which the business is relocating, notifying it of the relocation. The local government, upon receipt of the notification, then has 30 days to object to the relocation, in writing, to the Texas Department of Economic Development before the Texas Capital Fund application can be considered. A written objection to a relocation from a local government will prevent the application from being considered.

(7)-(9) (No change.)

(10) The Texas Department of Economic Development will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. TDED may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county that the city is located and will consider a project proposed by a county that is within an incorporated city, if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least 51% of the principal beneficiaries reside within the applicant's jurisdiction. [~~The Texas Department of Economic Development may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction and may consider a project proposed by a county that is outside the unincorporated area of the county if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least 51% of the principal beneficiaries reside within the applicant's jurisdiction.~~]

(11)-(12) (No change.)

(13) The Texas Department of Economic Development will not consider or accept an application for funding from a community [~~,~~] in support of a business project that is currently receiving Texas Capital Fund assistance through that same community [~~unless all contract close-out documents, including the certificate of completion, required for the close out of Texas Capital Fund projects have been submitted to the Texas Department of Economic Development and the close-out documents substantially meet standards for acceptability~~].

(14) The minimum and maximum award amount that may be requested/awarded for a project funded under the Texas Capital Fund infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, jumbo awards may not exceed $4,500,000 in total awards during the program year, unless a jumbo award is deobligated during the program year, in which case another jumbo award, of up to $1,500,000, may be awarded as a replacement. Additionally, no more than $3,000,000 in jumbo awards will be approved in either of the first two rounds. The maximum amount for a jumbo award is $1.5 million and the minimum award amount is $750,001. The maximum amount for a normal award is $750,000 and the minimum award amount is $50,000. These amounts are the maximum funding levels. The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final negotiation between TDED and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application. [~~The maximum award amount for a real estate program or infrastructure program award may be increased to an amount greater than $750,000, but may not exceed $1.5 million, if a unit of local government is applying on behalf of a specific business, and that specific business will create or retain a designated number of jobs at a cost per job level that qualifies for the increased award amount. These increased award amounts are referred to as "jumbo" awards. The number of jobs, the cost per job, and the maximum percentage of Texas Capital Fund financing of the total project costs that will qualify an application for the increased award amount will be defined in Texas Capital Fund application guidelines. Texas Capital Funds are not specifically reserved for projects that could receive up to the $1.5 million increased maximum grant amount, however, projects that receive an amount greater than $750,000 may not exceed $4.5 million in total awards during the program year, unless a jumbo award is deobligated during the program year, in which case another jumbo award, of up to $1.5 million, may be awarded as a replacement.~~]

(15) TDED will allocate the available funds for the year, less $600,000 for the Main Street program, as follows:

(A) First round. 50% of the annual allocation plus any deobligated and program income funds available, as of the application due date.

(B) Second round. 60% of the remaining allocation plus any deobligated and program income funds available, as of the application due date.

(C) Third round. Any remaining allocation plus any deobligated and program income funds available, as of the application due date.

(b) Overview. This fund is distributed to eligible units of general local government for eligible activities in the following program areas:

(1) The infrastructure program. The infrastructure program provides funds for eligible activities such as the construction or improvement of water/wastewater facilities, public roads, natural gas-line main, electric-power services, and railroad spurs. [~~Only loans by local governments to businesses may be provided for infrastructure improvements on private property and railroad spurs.~~]

(2)-(3) (No change.)

(c) Application Dates. The Texas Capital Fund (except for the Main Street Program) is available three times during the year, on a competitive basis, to eligible applicants statewide. Applications for the Main Street Program are accepted annually. Applications will not be accepted after 5:00 pm on the final day of submission. The application deadline dates are included in the program guidelines.

(d) Repayment Requirements. TCF awards for real estate improvements, private infrastructure, rail improvements, and most public infrastructure require repayment. Infrastructure payments and real estate lease payments are intended to be paid by the benefitting business to the applicant/contractor and constitute program income. The repayment is structured as follows:

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three year period or until the TCF contract between the applicant and TDED has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by TDED and may not be for the maximum of 20 years for

smaller award amounts. There is no interest expense associated with an award. Payments begin the first day of the first month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. After the contract between the applicant and the department is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five year ownership requirement and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) Infrastructure improvements.

(A) Private Infrastructure is infrastructure that will be located on the business's site or on adjacent and/or contiguous property, to the site, that is owned by the business, principals, or related entities. All funds for private infrastructure improvements require full repayment. Terms for repayment will be interest free, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the first month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(B) Public Infrastructure is infrastructure located on public property or right-of-ways and easements granted by entities unrelated to the business or its owners and not included or identified as private infrastructure. Terms for repayment will be interest free, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the first month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. Funds used for public infrastructure will comply with the following repayment schedule:

(i) Awards of $375,000 or less require no repayment.

(ii) Awards of $750,000 or less require repayment of 25% of the award amount greater than $375,000.

(iii) Awards in excess of $750,000 require repayment of 25% of the award amount greater than $375,000 and repayment of 50% of the amount in excess of $750,000.

(C) Rail improvements, regardless of the location, require full repayment. Terms for repayment will be no interest, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the first month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(e) Application process for the infrastructure and real estate programs. The Texas Department of Economic Development will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to TDED executive director. TDED executive director makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDED's Trade and Investment Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDED staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contact is signed.

(2) Upon receipt of applications, TDED staff reviews scores for validity and ranks them in descending order.

(3) TDED staff will then review the applications for eligibility and completeness in descending order based on the scoring. In those instances where the staff determines that the application has 12 or less deficiencies on the Application Checklist, unless an extension is granted, the applicant will be given 10 business days to rectify all deficiencies. An application containing more than 12 deficiencies will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDED staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The financial feasibility of the business to be assisted based on a credit analysis;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of Texas Capital Funds is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources. The applicant must document that other funds are unavailable to fund the project. Cities that collect an economic development sales tax must document status of funds, including balance available, monthly collections and a detailed list of outstanding commitments;

(E) Whether there is evidence that the permanent jobs created or retained will primarily benefit low-and-moderate income persons; and

(F) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with Texas Community Development Program funds.

(5) A copy of a complete application must be provided to the appropriate Regional Review Committee (RRC) . Proposals submitted for funding under the Texas Capital Fund require regional review "from the standpoint of consistency with regional plans and other such considerations" as provided for under the Texas Review and Comment System and Chapter 391, Texas Local Government Code. It has been determined that the participation by the RRC, as defined in the TCDP Annual Action Plan, meets the intent and purpose of these statutes through this concurrent review process. Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by the staff provided, such comments are received by the staff prior to a recommendation to management.

(6) Upon TDED staff determination that an application supports a feasible and eligible project, staff normally will schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official (or designee), business representative(s), and to visit the project site.

(7) TDED staff prepares a project report with recommendations (for approval or denial) to TDED's executive director.

(8) TDED executive director reviews the recommendation and announces the final decision.

(9) TDED staff works with the recipient to execute the contract agreement. While the contract award must be based on the information provided in the application, TDED staff may negotiate some elements of the final contract agreement with the recipient.

(10) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, the award recipient has 30 days to review and execute both copies. Once returned to TDED, the contract will be fully executed by the executive director and then a single copy is returned to contractor.

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on poverty rate stated on the score sheet. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on unemployment rate stated on the score sheet. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Community Need (maximum 30 points) Measures the economic distress of the applicant community.

(A) Unemployment (maximum 5 points). Awarded if the applicant's average county rate is higher than the annual state rate, indicating that the community is economically below the state average.

(B) Poverty (maximum 15 points). Awarded if the applicant's average county poverty rate is higher than the annual state rate, indicating that the community is economically below the state average.

(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.

(D) Open Contracts (Maximum 5 Points). Awarded to applicants that have two

(2) or less open TCF contracts.

(3) Jobs (maximum 30 points).

(A) Job Impact (maximum 15 points). Awarded by taking the Business' total job commitment, created & retained, and dividing by applicant's 1990 unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds the median job impact ratio for prior years; score 10 points if this figure exceeds 200% of the ratio; and score 15 points if this figure exceeds 400% of the ratio. County applicants should deduct the 1990 census population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's.

(B) Cost per Job (maximum 15 points). Awarded by dividing the amount of TCF monies requested (including administration) by the number of full-time job equivalents to be created and/or retained. Points are then awarded in accordance with the following scale:

(i) Below $10,000–15 points.

(ii) Below $15,000–10 points.

(iii) Below $20,000– 5 points.

(4) Business Emphasis (maximum 20 points).

(A) Manufacturers (max 10 points). Awarded if the Business' primary Standard Industrial Classification (SIC) code number starts with 20-39 or if their primary North American Industrial Classification System (NAICS) code number starts with 31-33. This is based on the SIC number reported on the Business' Texas Workforce Commission (TWC) Quarterly Contribution Report, Form C-3 or their IRS business tax return. Foreign businesses that have not had an SIC/NAICS code number assigned to them by either the TWC or IRS may submit alternative documentation to support manufacturing as their primary business activity to be eligible for these points.

(B) Small businesses (maximum 5 Points). Awarded if the Business employs no more than 100 employees for all locations both in and out of state. This number is determined by the business and any related entities, such as parent companies, subsidiaries & common ownership. Common ownership is considered 51% or more of the same owners.

(C) HUB-Historically Underutilized Business (maximum 5 Points). Awarded if a business is certified by the state General Services Commission (GSC) as a Historically Underutilized Business (HUB). Provide a copy of GSC's certification in the application.

(5) Leverage/Match (maximum 20 points).

(A) Match Ratio (maximum 10 points). Awarded by dividing the total amount of other funds committed to this project divided by the requested TCF amount, including administration. Points are then awarded in accordance with the following scale:

(i) 1.25 : 1 (125 percent)– 5 points.

(ii) 2.00 : 1 (200 percent)–10 points

(B) Community Match Ratio (maximum 10 points). Points are awarded based on the following criteria.

(i) By dividing the total amount of community funds (ie. funds from the applicant and/or their economic/industrial development organizations only) committed to this project by the requested TCF amount, including administration. Points are then awarded for each full 1% of the community match and the 10 maximum points are awarded if the community commits at least 10% of community matching funds. Example: $50,000/$750,000=.066=6%, thus 6 points would be awarded.

(ii) Cities earn 5 points if they have passed the Economic Development sales tax and if annual receipts are less than $50,000. These points are earned whether or not the city makes a financial contribution to the project. If the city makes a contribution the city can receive an additional 1 point for each full 1% of community contribution, not to exceed 5 additional points.

(iii) Counties earn 5 points if they have passed the County Development District Tax and if annual receipts are less than $50,000. These points are earned whether or not the county

makes a financial contribution to the project. If the county makes a contribution the county can receive an additional 1 point for each full 1% of community contribution, not to exceed 5 additional points.

(g) Equity requirement by the business. All businesses are required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. This equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. A minimum of a 33% equity injection (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required, if the business has been operating for less than three years and is accessing the R/E program. TDED staff will consider a business to have been operating for at least three years if:

(1) The business or principals have been operating for at least three years with comparable product lines or services;

(2) The parent company (100% ownership of the business) has been operating for at least three years with comparable product lines or services; or

(3) An individual or partnership (100% ownership of the business) has been in existence/operation for at least three years with comparable product lines or services.

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

(1) Each applicant must submit two complete applications to Texas Historical Commission (THC). No changes to the application are allowed after the application deadline date, unless they are a result of TDED staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contact is signed.

(2) Upon receipt of the applications, THC evaluates applications based on the scoring criteria and ranks them in descending order.

(3) TDED staff will then review the four highest ranking applications for eligibility and completeness in descending order based on the scoring. Applications with 13 or more deficiencies will be considered ineligible. If that occurs than the next highest ranking application will be substituted. In those instances where the staff determines that the application has 12 or less deficiencies on the Application Checklist, unless an extension is granted, the applicant will be given ten business days to rectify all deficiencies. In the event staff determines the application contains activities that are ineligible for funding, the application will be restructured or considered ineligible. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDED staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The project feasibility;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of Texas Capital Funds is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources. The applicant must document that other funds are unavailable to fund the project. Cities that collect an economic development sales tax must document status of funds, including balance available, monthly collections and a detailed list of outstanding commitments; and

(E) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with Texas Community Development Program funds.

(5) A copy of a complete application must be provided to the appropriate Regional Review Committee (RRC). Proposals submitted for funding under the Texas Capital Fund require regional review "from the standpoint of consistency with regional plans and other such considerations" as provided for under the Texas Review and Comment System and Chapter 391, Texas Local Government Code. It has been determined that the participation by the RRC, as defined in the TCDP Annual Action Plan, meets the intent and purpose of these statutes through this concurrent review process. Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by THC and TDED provided, such comments are received by TDED prior to a recommendation to management.

(6) Upon TDED staff determination that an application supports a feasible and eligible project, an on-site visit to the four highest scoring applicants may be conducted by THC and TDED staff to discuss the project and program rules with the chief elected official, as applicable, or their designee and to visit the Main Street area.

(7) TDED staff prepares a project report with recommendations (for approval or denial) for credit committee and then credit committee makes a recommendation to TDED's executive director for the final decision.

(8) TDED executive director reviews the recommendation and announces the project selected for funding.

(9) TDED staff works with the recipient to execute the contract agreement. While the contract award must be based on the information provided in the application, TDED staff may negotiate some elements of the final contract agreement with the recipient.

(10) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, unless an extension is granted, award recipient has 30 days to review and execute both copies. Once returned to TDED, the contract will be fully executed by the executive director and then a single copy is returned to contractor.

(i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.

(1) In the event of a tie score, applications are ranked from the lowest to the highest based on the current aggregate available balance, from all existing open TCF contracts. Thus, an applicant that has a TCF project balance of $250,000 in existing projects would be ranked above one having a balance of $600,000.

(2) Project Feasibility (maximum 70 points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten criteria for Main Street Recognition is required. First year Main Street Cities must receive prior approval from THC to apply and must submit the Main Street Criteria for Recognition Survey with the TCF application. The ten criteria include the following:

(A) Broad-based public support for commercial district revitalization–(10 points)

(B) Local Main Street program's organization's vision and mission-(5 points)

(C) Main Street work/marketing plan–(5 points)

(D) Historic preservation ethic–(10 points)

(E) Involvement of board of directors and committees–(10 points)

(F) Main Street operating budget–(5 points)

(G) Professional Main Street program manager experience–(10 points)

(H) Local Main Street program training–(5 points)

(I) Reinvestment statistics related to financial reinvestment, job creation, and new business creation–(5 points)

(J) Participation in the National Main Street Network–(5 points)

(3) Applicant (maximum 10 points).

(A) Applicant has not received a TCF main street grant–(5 points)

(B) Applicant has not received a TCF main street grant and the applicant has been an Official Texas Main Street City for more than 5 years–(10 points)

(4) Leverage (5 points). Score 5 points if matching dollars are greater than or equal to the following ratios based on two separate population categories:

(A) Applicant's population less than 5,000 persons–0.75:1

(B) Applicant's population equal to or greater than 5,000 persons–1.5:1

(5) Minority Hiring (maximum 5 points). Measures applicant's hiring practices. Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community. In the event 10% or less of the applicant's population base is composed of minority residents, the applicant has seven or fewer non-seasonal full-time employees, or 5% or more of the applicant's population base is living in quarters or institutions, the applicant is assigned the average score on this factor for all applicants for the previous program year or the score based on the actual figures, whichever is higher.

(6) Main Street Reinvestment Statistics (maximum 10 points). (Private Sector Reinvestment) Formulates amount based on per capita, per year in program.

(j) Threshold criteria for the main street improvements program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) and paragraph (3) of this subsection.

(1) The national objective of aiding in the prevention or elimination of Slum or Blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §9.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

(3) Main street designation. The applicant must be designated by the Texas Historical Commission as a Main Street City prior to submitting a Texas Capital Fund application for main street improvements.

~~[(c) Selection procedures. The Texas Department of Economic Development will accept applications three times annually for the infrastructure and real estate program and once annually for the main street program. Applications are reviewed after they have been competitively scored. Texas Department of Economic Development staff will make recommendations to the executive director for final award. The application and selection procedures consist of the following steps:]~~

~~[(1) Each applicant must submit a complete application to the Texas Department of Economic Development's Business and Fiscal Services Division.]~~

~~[(2) In accordance with the selection criteria for the real estate program and infrastructure program, applications received under the real estate program and infrastructure program are evaluated and scored by Texas Department of Economic Development staff.]~~

~~[(3) Texas Department of Economic Development staff then review each application for eligibility and completeness in descending order based on the scoring. In those instances where the staff determines that the application is incomplete (evidenced by 13 or more inadequacies on the Application Checklist), the application will be returned to the applicant and may be submitted in the next funding cycle. Returned applications will not be considered for the current funding cycle. Applications resubmitted for future funding cycles will by competing with those applications submitted for that cycle. No preferential placement will be given for applications previously submitted and not funded. In those instances where the staff determines that the application has 12 or less inadequacies on the Application Checklist, the applicant will be given ten business days to rectify all deficiencies. In the event staff determines that the application contains activities that are ineligible for funding, the application will be returned to the applicant. Staff then conducts a review of each complete application to make threshold determinations with respect to:]~~

~~[(A) the financial feasibility of the business to be assisted based on a credit analysis;]~~

~~[(B) the strength of commitments from all other public and/or private investments identified in the application;]~~

~~[(C) the ability of the applicant to operate or maintain any public facility or service assisted with Texas Community Development Program funds, if infrastructure improvements are requested;]~~

~~[(D) whether the use of Texas Capital Funds is appropriate to carry out the project proposed in the application;]~~

~~[(E) whether there is evidence that at least 51% of the permanent jobs created or retained will benefit low- and moderate-income persons;]~~

~~[(F) whether efforts have been made to maximize other financial resources; and]~~

[(G) a copy of a complete application must be provided to the appropriate Regional Review Committee. Proposals submitted for funding under the Texas Capital Fund require regional review "from the standpoint of consistency with regional plans and other such considerations" as provided for under the Texas Review and Comment System and Chapter 391, Texas Local Government Code. Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by the staff provided, such comments are received by the staff prior to the time that the staff makes a recommendation to the executive director of the Texas Department of Economic Development.]

[(4) Upon the Texas Department of Economic Development's determination that an application supports a feasible and eligible project, staff may schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official, or his designee, and business representative(s), and to visit the project site.]

[(5) Staff prepares a project report with recommendations for the executive director who makes the final award.]

[(6) Upon the executive director's selection, the projects selected for funding are announced by the Texas Department of Economic Development.]

[(7) Texas Department of Economic Development staff then negotiates the contract with the recipients. The contract terms are based on the information provided in the application, but the Texas Department of Economic Development may vary the terms of the contract with the recipient.]

[(d) Selection criteria for the real estate and infrastructure programs of the Texas Capital Fund focus upon factors which may include, but which are not limited to, paragraphs (1)-(9) of this subsection. In addition to the selection criteria described in paragraphs (1)-(9) of this subsection, projects will be reviewed and evaluated upon the following additional factors: the history of the applicant community in the program; the strength of the business or marketing plan; the management experience of the business's principals; and the justification of the minimum Texas Capital Fund contribution necessary to serve the project:]

[(1) Creation of jobs paying an above-average wage;]

[(2) Generation of a greater ratio of private investment to Texas Capital Fund investment;]

[(3) Expansion of markets through means such as exporting, value-added processing, and/or creating new or modified product lines;]

[(4) Provision of job opportunities at the lowest possible Texas Capital Fund cost per job;]

[(5) Benefit to areas of the state most in need of new capital investment and/or jobs;]

[(6) Assistance for small businesses and manufacturers;]

[(7) Feasibility of project and ability to create and/or retain jobs; and]

[(8) Creation or retention of jobs primarily for low and moderate income persons.]

[(9) Applications from communities designated as defense economic readjustment zones receive additional scoring consideration if at least fifty percent (50%) of the TCF funds will be expended for the direct benefit of the readjustment zone and the project will promote TCDP-eligible economic development in the community.]

[(e) Additional criteria for the infrastructure program. A minimum of a 10% equity injection, based on total project costs in the form of cash, land, buildings, equipment, furniture, or fixtures by the business is required. For infrastructure program awards in excess of $750,000, assisted businesses are required to repay 25% of the award amount with no interest accruing. For infrastructure program railroad improvement awards, assisted businesses are required to make full repayment of the Texas Capital Fund financing with no interest accruing.]

[(f) Additional criteria for the real estate program. A minimum of a 10% equity injection, based on total project costs in the form of cash, land, buildings, equipment, furniture, or fixtures by the business is required if the business has been operating for at least three years. A minimum of a 33% equity injection, based on total project costs, in the form of cash, land, buildings, equipment, furniture, or fixtures by the business is required if the business has been operating for less than three years. For real estate development projects, assisted businesses are required to make full repayment of the Texas Capital Fund portion of the project financing with no interest accruing.]

[(g) Selection criteria for the main street improvements program. Texas Department of Economic Development staff and staff from the Texas Historical Commission review and evaluate the applications. The selection criteria focus upon factors which may include, but which are not limited to, paragraphs (1)-(8) of this subsection. In addition to the selection criteria described in paragraphs (1)-(8) of this subsection, projects will be reviewed and evaluated upon the following additional factors: the history of the applicant community in the program; the strength of the marketing plan; and the justification of the minimum Texas Capital Fund contribution necessary to serve the project. The terms and criteria used in this subsection are further defined in the application guidelines for this program.]

[(1) Threshold criteria. In order for its application to be considered, an applicant must meet the requirements of either subparagraph (A) or (B), and (C) of this paragraph:]

[(A) The national objective of aiding in the prevention or elimination of Slum or Blight on a spot basis. To show how this objective will be met, the applicant must;]

[(i) document that the project qualifies as slum or blighted on a spot basis under local law; and]

[(ii) describe the specific condition of blight or physical decay that is to be treated.]

[(B) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §9.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.]

[(C) Main street designation. The applicant must be designated by the Texas Historical Commission as a Main Street City prior to submitting a Texas Capital Fund application for main street improvements.]

[(2) Feasibility of the project.]

[(3) Creation of jobs paying an above-average wage.]

[(4) Generation of a greater ratio of private investment to Texas Capital Fund investment.]

[(5) Provision of job opportunities at the lowest possible Texas Capital Fund cost per job.]

[(6) Benefit to areas of the state most in need of new capital investment and/or jobs.]

[(7) Texas Historical Commission scoring.]

[(8) Community profile.]

§9.9. Colonia Fund.

(a)-(e) (No change.)

(f) Selection criteria (colonia construction fund). The following is an outline of the selection criteria used by the Department for scoring colonia construction fund applications. Four hundred forty points are available.

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

(3) Project priorities (total–195 points) When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the Texas Community Development Program funds requested minus the Texas Community Development Program funds requested for engineering and administration, a percentage of the total Texas Community Development Program construction dollars for each activity is calculated. The percentage of the total Texas Community Development Program construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations determines the composite project priorities score. The different project priority scoring levels are:

(A) activities (service lines, service connections, and/or plumbing improvements) providing access to water and/or sewer systems funded through the Texas Water Development Board Economically Distressed Area program–195

(B) first time public water and/or sewer service and housing activities–145

(C) first time water and/or sewer service through a privately-owned for profit utility–135

(D) [(C)] installation of approved residential on-site wastewater disposal systems–110

(E) [(D)] expansion or improvement of existing water and/or sewer service–95

(F) [(E)] street paving and drainage activities–75

(G) [(F)] all other eligible activities–20

(4) (No change.)

(g)-(j) (No change.)

§9.10. Housing Fund.

(a) General provisions. Two separate fund categories are available under the housing fund. The housing infrastructure [demonstration] fund is available for public facilities and infrastructure improvements supporting the development and construction of single family and multifamily low to moderate income housing. The housing infrastructure [demonstration] funds may not be used for the actual construction cost of new housing. The housing rehabilitation fund is available for the rehabilitation or existing owner-occupied and renter-occupied housing units and, in strictly limited circumstances, the construction of new housing that is accessible to persons with disabilities. The housing rehabilitation fund selection criteria places emphasis on housing activities that provide accessible housing for persons with disabilities.

(1) An applicant may not submit an application under this fund and also under any other Texas Community Development Program fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) Each applicant must meet the threshold requirements of §9.1(h) and §9.1(n) of this title (relating to General Provisions), in order to be eligible to apply for housing fund assistance.

(3) In order to meet a national program objective under the housing infrastructure [demonstration] fund, at least 51% of the housing units built in conjunction with each housing infrastructure [demonstration] fund project must be occupied by low to moderate income persons. In the case of a rental housing construction project, occupancy by low to moderate income persons must be at affordable rents. Texas Community Development Program funds can be used to finance 100% of the eligible project costs when at least 51% of the units are occupied by low to moderate income persons.

(4) There is only one type of housing infrastructure [demonstration] fund project that may qualify for assistance when less than 51% of the units will be occupied by low to moderate income persons. Eligible assistance may also be provided to reduce the cost of new construction of a multifamily non-elderly rental housing project. However, at least 20% of the units must be occupied by persons of low to moderate income at affordable rents. For this type of project, the maximum percentage of Texas Community Development Program funds available for the eligible project costs is equal to the percentage of the project's units that are occupied by persons of low to moderate income at affordable rents.

(5) A housing rehabilitation fund applicant must document that at least 51% of the persons who would directly benefit from the implementation of housing activities proposed in the application are of low to moderate income. It is generally expected that 100% of the persons benefitting from the housing activities will be low to moderate income persons.

(b) Eligible activities (housing infrastructure [demonstration] fund). The only eligible activities under the housing infrastructure [demonstration] fund are:

(1) The provision of public facilities improvements supporting the development of the low to moderate income housing

(2) Engineering costs associated with the public facilities improvements

(3) Administrative costs associated with the site clearance, site improvements and public facilities improvements

(4) Eligible projects must leverage public (local, state, or federal) or private resources for the actual housing construction costs and any other project costs that are not eligible for assistance under this fund.

(c) Funding cycle (housing infrastructure [demonstration] fund). This fund is allocated on an annual basis to eligible units of general local government through a statewide competition [direct award basis]. Applications for funding must be received by the Texas Community Development Program by the application deadline date or dates specified in the application guide for this fund.

(d) (No change.)

(e) Funding cycle (housing rehabilitation fund). This fund is allocated to eligible units of general local government on a biennial basis for the 1999 and 2000 program years pursuant to a statewide competition held during the 1999 program year. Applications for funding from the 1999 and 2000 program year allocations must be received by the Texas Community Development Program by 5:00 p.m. on the date specified in the most recent application guide for this fund. [~~This fund is allocated on an annual basis to eligible units of general local government through a statewide competition. Applications for funding must be received by the Texas Community Development Program by 5:00 p.m. on the date specified in the most recent application guide for this fund.~~]

(f) Selection procedures (housing rehabilitation fund).

(1) Each eligible local government may submit one application [~~for funding under the housing demonstration fund and one application~~] for funding under the housing rehabilitation fund. Two copies of the application must be submitted to the Department and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, the Department staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified by the Department staff in the timeframe stated in the notification.

(3) Each regional review committee may, at its option, review and comment on an application from a local government within its state planning region. These comments become part of the application file, provided such comments are received by the Department prior to final review of an application.

(4) The Department then scores the housing rehabilitation fund to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant.

(5) Following a final technical review, the Department staff submits the 1999 program year and 2000 program year funding recommendations [~~makes funding recommendations for the housing demonstration fund and the housing rehabilitation fund~~] to the executive director of the Department.

(6) The executive director of the department reviews the 1999 program year funding recommendations for project awards and announces the contract awards.

(7) Upon announcement of the 1999 program year contract awards, the Department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(8) When the 2000 program year Texas Community Development Program allocation becomes available, the executive director of the Department reviews the 2000 program year final recommendations for project awards and announces the contract awards.

(9) Upon announcement of the 2000 program year contract awards, the Department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(g) (No change.)

(h) Selection procedures (housing infrastructure fund).

(1) Each eligible local government may submit one application for funding under the housing infrastructure fund. Two copies of the application must be submitted to the Department and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, Texas Community Development Program staff and Credit Division staff review the application to determine whether it is complete, if all proposed activities are program eligible, and if the project is financially feasible. If not subject to disqualification, the applicant may correct any deficiencies identified by the Department staff in the timeframe stated in the notification.

(3) After review by Department staff, each application is evaluated by a team of reviewers. Reviewer's scores are averaged for a final team score and applications recommended for funding are forwarded to the executive director of the Department.

(4) The executive director forwards the recommended applications to the Department's Board for final approval. If approved by the Department's Board, the executive director announces the contract awards.

(5) Upon announcement of the contract awards, the Department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased.

(i) Selection criteria (housing infrastructure fund). The following is an outline of the selection criteria used by the Department for scoring applications under this fund. One hundred sixty-five points are available.

(1) Financial feasibility (20 points).

(2) Market assessment (30 points).

(3) Affordable housing solutions (30 points).

(4) Organizational capacity (25 points).

(5) Program consideration (35 points).

(6) Project design (10 points)

(7) Community support (10 points)

(8) Rural project (5 points). Project is located in a community with a population of 10,000 persons or less.

(j) Principal residence requirement (housing infrastructure fund). Each resident must be one that, at the time the mortgage loan is executed, the borrower reasonably expects to become his or her principal residence within a reasonable time (not to exceed 60 days) after the financing is provided. Whether a residence is occupied as a principal residence depends upon all the facts and circumstances of each case, including the good faith of the borrower. A residence

that is intended to be used primarily in a trade of business will not satisfy the principal residence requirement. Further, a residence that will be used as an investment property or a recreational home does not satisfy the principal residence requirement.

(k) Subsidy recapture requirement (housing infrastructure fund) Single family subdivision homebuyers will be subject to an infrastructure subsidy recapture on the capital gain (profit) if the home is sold, the first lien is refinanced, or the first lien is paid off during the first five years after closing. A second lien will be completed and recorded by the locality at the time that the first lien is secured. A copy of the subordinate lien should be forwarded to the Department. All funds will be repayable directly to the Department. The recapture amount shall not exceed the infrastructure construction cost per lot or $5,000, whichever is less. If the homebuyer is also the recipient of downpayment assistance funds from the Department, the infrastructure lien will take a third position. After the five-year timeframe has elapsed, the subordinate lien will become a forgivable loan. The recapture provision shall not apply to the off-site infrastructure provided for multifamily projects.

§9.11. Small Towns Environment Program Fund.

(a) General provisions. This fund is available to eligible units of general local government to provide financial assistance to cities and communities that are willing to address water and sewer needs through self-help methods that are encouraged and supported by the Small Towns Environment Program. The self-help method for addressing water and sewer needs is best utilized by cities and communities recognizing that conventional water and sewer financing and construction methods cannot provide an affordable response to the water or sewer needs. By utilizing a city's or community's own resources (human, material, and financial), the costs for the water or sewer improvements can be reduced significantly from the retail costs of the improvements through conventional construction methods. Participants in the small town environment program fund should attain at least a forty percent reduction in the costs of the water or sewer project by using self-help in lieu of conventional financing and construction methods.

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

(3) Cities and counties submitting 1999 community development fund applications [~~receiving 1997 or 1998 community development fund grant awards for applications~~] that do not include water, sewer, or housing activities are not eligible to receive a 1999 [~~1998~~] grant award from this fund. However, the Department may consider a city's or county's request to transfer funds that are not financing water, sewer, or housing activities under a 1999 or 2000 [~~1997 or 1998~~] community development fund grant award to finance water and sewer activities that will be addressed through self-help methods.

(b)-(c) (No change.)

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903356
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 475–3726

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TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 2. General Policies and Procedures

Subchapter A. Principles and Procedures of the Commission

13 TAC §2.6

The Texas State Library and Archives Commission proposes new §2.6 to establish dates when advisory boards to the commission will be abolished.

Raymond Hitt, Assistant State Librarian, has determined that for each year of the first five years the section is in effect there will not be fiscal implications for state and local government as a result of enforcing or administering this section. The cost of compliance for small businesses or individuals will be none.

Mr. Hitt has also determined that for each of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section will be to assure that the commission continues to receive advice on library, archival, and records management policy from persons with special expertise and from the general public.

Comments may be submitted to Raymond Hitt, Assistant State Librarian, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927.

The new section is proposed under Government Code §2110.008 that requires the commission to establish by a rule date on which an advisory committee will automatically be abolished and §441.006(a) which provides the Commission with authority to govern the Texas State Library and adopt rules on various subjects.

The new section affects the Government Code §§441.124, 441.161, 441.206, and 441.202.

§2.6. Sunset Dates for Advisory Committees.

The following advisory committees will be abolished on August 31, 2009 unless the commission continues or consolidates the committees prior to that date:

(1) Library Systems Act Advisory Board,

(2) Local Government Records Committee,

(3) TexShare Advisory Board, and

(4) Texas Historical Records Advisory Board.

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

Filed with the Office of the Secretary of State on June 7, 1999.

TRD-9903318
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 463-5440

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Chapter 5. County Librarian Certification

13 TAC §5.6

(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 State Library and Archives Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Library and Archives Commission proposes to repeal §5.6 relating to county librarian certification. The section provided a penalty for persons submitting false information for county librarian certification.

The reason for the proposed repeal is because of developments in administrative law and determination that the rule exceeds the statutory authority given to the Commission.

Jeanette Larson, Director of the Library Development Division, has determined that there will be no fiscal implications for state and local government, and that there will be no fiscal implications for small businesses or individuals as a result of the repeal of this rule.

Ms. Larson has determined that the public benefits as a result of repealing this rule will be to bring the Texas State Library and Archives Commission in compliance with administrative law.

Comments on the proposed rules may be submitted to Jeanette Larson, Director of the Library Development Division, P.O. Box 12927, Austin, TX. 78711-2927.

The repeal is proposed under the Government Code §441.006(a) and §441.007(a), which provide the Commission with authority to govern the Texas State Library, to adopt rules on various subjects, and to adopt rules necessary to qualify county librarians.

The proposed repeal affects Government Code §441.007, §441.0071, and §441.0072.

§5.6. Penalties.

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

Filed with the Office of the Secretary of State on June 7, 1999.

TRD-9903319
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 463-5440

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TITLE 19. EDUCATION

Part VII. State Board for Educator Certification

Chapter 229. Accountability System for Educator Preparation

19 TAC §§229.1–229.4

The State Board for Educator Certification proposes amendments to §§229.1-229.4, concerning General Provisions and Purpose of Accountability System, Definitions, The Accreditation Process and Reporting Requirements. The proposed amendments address the use of performance data aggregated by demographic group, examinee's test performance from the initial year the test is taken, and the use of data for a small number of candidates.

Under the current rule, candidates' success on subsequent attempts during the first year are not included in ASEP until test results are used as cumulative data in the year following the initial attempt. This rule change allows the entity to receive credit for their students' success on any other attempts made during the same academic year. Amended §229.2 will replace "first-time pass rate" with "first-year pass rate," which uses performance from the last attempt made on the test during the academic year in which the test is first taken. Under the proposed amendment, accreditation status for September 1999 will be based on the new first-year pass rate and the current two-year cumulative pass rate.

Another major amendment allows educator preparation programs to base accreditation on whether each demographic group meets either the first-year or cumulative standards. The current rule requires that all groups meet the 70 percent first time pass rate or that all groups meet the 80 percent cumulative pass rate.

It is recommended that §229.3 be revised to accredit entities demonstrating acceptable performance within each of the seven demographic groups (all students, African American, Hispanic, Other, white, male, female) based on either (1) a first-year pass rate of 70 percent or higher for each individual group OR (2) a two-year cumulative pass rate of 80 percent for the same group. Although the change allows for more flexibility in the reporting of each demographic group, each group will still need to be reported to receive an accreditation rating.

Another amendment addresses the concern associated with using data derived from fewer than 30 test takers. It is recommended that §229.3(e)(1) be amended to allow the performance of demographic groups with less than 30 test takers to be combined with same-group data from the previous one or two reporting periods. If the sum of test takers is 30 or more, the entity must meet the appropriate 70 percent first-year or 80 percent cumulative standard for that group in order to be accredited. If the sum is less than 30 after the numbers of test takers from three ASEP reporting periods have been combined and the entity would be "Accredited-Under Review" based on the performance of the combined group, then the entity may request that the executive director reconsider the status. The provision for combining test takers across years applies only to the ethnic and gender groups and does not apply to "all students" at the entity. The number of test takers in the "all students" group will not be combined over years, even if the number is less than 30. However, if the number of "all students" test takers for the reporting period is less than 10 and the entity would be "Accredited-Under Review" based on their performance, then the entity may request reconsideration of that status from the executive director. For the September 1999 ASEP ratings, it is also recommended for small group data (fewer than 30 test takers) that the current number be combined with data from the September 1998 ASEP reporting period.

Additionally, the proposed amendment to §229.3(g)(2) modifies the definition for diversity so that the Board may recognize entities that either already recommend for certification a commend-

able level of diverse candidates or that have made substantial progress in increasing the number or percentage of recommended candidates. An additional amendment clarifies the methodology for comparing minority participation to the state and regional populations.

Another amendment recommends that §229.3(c) exclude from ASEP the content-test data for a degreed individual enrolled in an educator preparation program at an institution of higher education who received their undergraduate degree from another institution. The entity will still be held accountable for these individuals' test performance on all attempts on the professional development tests, tests for delivery systems, and other tests as identified by the executive director.

The exclusion applies only to the individual's initial attempt on the content test for the certificate being sought; subsequent attempts on that test will be used in ASEP. Therefore, if the individual is not successful on the content test the first time it is taken, their second attempt is counted in ASEP. Additional attempts will be treated in ASEP in the same manner as retakes on all tests.

As with all tests taken by candidates, the entity must authorize the individual to take that content test. In order to exclude the individual's content-test performance from ASEP, the entity must inform SBEC that the individual is a post-baccalaureate student with a degree from another institution; as a result, ASEP will use their content-test performance according to the conditions described above. This change will begin with the 1999-2000 academic year and impact administrations after September 1, 1999.

Current ASEP rules require approval of the fields in which an entity may prepare candidates for certification (§229.3(f)); however, the rule does not specify an implementation date. It is recommended that the rule be amended with an effective date of September 1, 2002. Because approval of a field is based on performance for three consecutive years, the approval of fields in September 2002 would be based on pass rates during the 1999-2000, 2000-01, and 2001-02 academic years. Implementation in 2002 would coincide with the scheduled implementation of §229.3(e)(2), which requires that an acceptable proportion of certificate fields offered by a program meet the performance standards in order to be "Accredited."

The proposed amendments maintain the intent of the Legislature to hold programs accountable for the performance of their candidates while recognizing the limitations of measuring performance based on small numbers of test takers

Pamela B. Tackett, Executive Director, State Board for Educator Certification (SBEC) has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. SBEC will incur costs for required software modifications. SBEC reports and software, including the EZ-ASEP software provided to entities for downloading test data and analyzing test performance must be modified. Entities must identify, beginning with fall 1999 test administrations, which candidates have a degree from another institution. The ASEP software must be modified to implement this change.

Ms. Tackett 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 rules will be current and updated regulations. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to: Stephanie Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The amendments are proposed under the Texas Education Code (TEC) §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the continuing accountability of all educator preparation programs.

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

§229.1. General Provisions and Purpose of Accountability System.

(a) The State Board for Educator Certification (SBEC) is responsible for insuring an adequate supply of qualified and competent professional educators for the state public school system. This chapter [~~,relating to the professional educator preparation accountability system,~~] governs the accreditation of all entities that prepare individuals [~~educators~~] for certification [~~Texas public schools~~].

(b) The purpose of the accountability system for educator preparation is to assure that entities are held accountable for the readiness for certification of individuals [~~educators~~] completing the programs. An educator preparation program is defined as an entity approved by the State Board for Educator Certification to recommend candidates for certification in one or more certification fields. At a minimum, accreditation is based on the performance of candidates for certification on examinations prescribed under Texas Education Code (TEC) §21.048(a) and beginning educators' performance on the appraisal system adopted by the Board under TEC §21.045(a). The Board may adopt additional measures. Each entity is required to file an annual report of performance indicators. An entity will receive commendations for success in areas identified by the Board.

§229.2. Definitions.

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

(1) Academic year - September 1 through August 31.

(2) Acceptable - A minimum criterion set by the Board.

(3) Beginning educator - A person employed within the first two years after completing educator preparation program requirements in an accredited preparation program, who passed the appropriate assessment(s) for the field of certification pursued and was issued a [~~was certified (received~~] Texas certificate[~~)~~], and who was assigned in his/her area of certification.

(4) Certification field - Professional development (elementary and secondary) and delivery system fields, academic or career and technology [~~vocational~~] content fields, special education fields, or professional fields in which an entity is approved to offer certification.

(5) Cohort group - A group of persons admitted and beginning an educator preparation program in an academic year.

(6) Combined pass rate - The combined success of the first-year or cumulative test takers from two or three consecutive academic years. Formula: The sum of the dividends used in calculating each individual academic year's pass rate divided by the sum of the divisors used in calculating each individual academic year's pass rate.

(7) Cumulative (two-year) pass rate - The success of the previous academic year's initial test takers over the two-year period. The rate reflects a candidate's success on the last attempt on that test within the two academic years. Formula: For tests initially attempted during the previous academic year, the number of successful (i.e., passing) last attempts within the two-year academic period divided by the total number of last attempts within the two-year academic period.

[~~(6) Cumulative pass rate - The number of examinations passed (by the previous year's first time takers) within the two year academic period divided by the number of previous year's first time tests taken. (This pass rate reflects performance on the last time a test was taken within the two academic years.)~~]

(8) [~~(7)~~] Educator preparation program - An entity approved by the Board to recommend candidates in one or more certification fields. For the purposes of this chapter [~~section,~~] "program" and "entity" are used interchangeably.

(9) First-year pass rate - Candidates' success on tests during the academic year in which those tests are initially attempted. The rate reflects a candidate's success on the last attempt on that test within the academic year in which the test was taken for the first time. Formula: For tests initially attempted during the current academic year, the number of successful (i.e., passing) last attempts within the year divided by the total number of last attempts.

[~~(8) First time pass rate - The number of examinations (Examination for the Certification of Educators in Texas (ExCET), Texas Oral Proficiency Test (TOPT), or Texas Assessment of Sign Communication (TASC)) passed during an academic year on the first attempt divided by the number of first time attempts in that year. (The pass rate reflects performance only on the student's initial attempt on the test.)~~]

(10) [~~(9)~~] Performance indicators - Data elements about a cohort of persons admitted to an educator preparation program in an academic year, including preparation for all certification fields.

§229.3. The Accreditation Process.

(a) Annually, beginning September 1, 1998, an entity must meet the accreditation standards at acceptable levels of performance set by the Board.

(b) An entity is rated "Accredited," "Accredited -Under Review," or "Not Accredited." Upon initial review of an entity desiring to prepare educators for certification, an entity will be rated "Accredited-Preliminary Status," which an entity may maintain for three years, after which time the entity will be accountable for the provisions of this chapter [~~held to the standards in subsections (e) and (f) of this section.~~] Persons may be recommended for certification while an entity is "Accredited-Preliminary Status."

(c) An entity is accountable for the performance of all candidates for certification. Performance on a content-area assessment taken for the first time by a degreed candidate who earned a baccalaureate degree from another entity may be excluded from an entity's ASEP performance if the entity notifies the executive director of the individual's status prior to the candidate taking the test. This exclusion applies only to an individual's first attempt on the content-area assessment for the certificate being sought. Subsequent attempts will be used for evaluating an entity's accreditation status under this chapter. For purposes of calculating the first-year pass rate, individuals' second attempt on the content-area test will be considered their first attempt. The executive director shall identify the specific assessments subject to exclusion under this subsection. Pass rates on examinations and performance within the first two years in the profession determine the accreditation rating.

(d) Accreditation relating to test performance will be based upon first-year [~~time~~] and cumulative pass rates. In no event shall the first-year [~~time~~] or cumulative pass rates provided for in this section be less than 66 2/3%.

(e) Accreditation of entity

(1) For an entity to be "Accredited" to prepare educators, performance [~~must be as follows~~] for each demographic group (all students, African American, Hispanic, white, other, male, female) must be as follows:

(A) acceptable first-year pass rates for all tests taken [~~for the first time~~] during the academic year prior to the issuance of the accreditation rating, or

(B) acceptable cumulative pass rates for all tests taken for the two years prior to the issuance of the accreditation rating; and

(C) effective September 1, 2002, persons in an educator role who complete certification requirements from the entity between September 1, 1999 and August 31, 2000 and every academic year thereafter must meet performance requirements. The Board will determine the method of assessing performance. The basis for the accreditation rating will be the performance of persons employed in a Texas public school and assigned in their area of certification.

(D) based upon performance required by subparagraphs (A) and (B) of this paragraph, an entity rated "Accredited - Under Review" may request reconsideration of that status by the executive director if the status is based upon less than ten students in the "all students" [~~a~~] demographic group. The executive director may remove the entity from "Accredited - Under Review" status.

(E) Effective September 1, 2000, if the first-year or cumulative number of examinees within an ethnic or gender demographic group for the current reporting period is less than 30, the following method shall be used for determining the accreditation status of the entity:

(i) If the small group is first-year test takers, the number of first-year test takers from the current academic year shall be combined with the number of first-year takers from the same demographic group for the previous academic year. If the combined number of test takers is 30 or more, the combined pass rate of the group shall be considered under paragraph (1)(A) of this subsection.

(ii) If the combined number of test takers from clause (i) of this subparagraph is less than 30, that number will be added to the number of test takers from the same demographic group for the previous academic year. If the resulting number of test takers is 30 or more, the combined pass rate of the group shall be considered under paragraph (1)(A) of this subsection.

(iii) If the combined number of test takers from clause (ii) of this subparagraph is less than 30 and their combined pass rate would cause the entity's rating to be Accredited-Under Review, the entity may request that the executive director reconsider the Accredited-Under Review status. In considering the entity's request, the executive director shall examine current and historical information relating to the entity's performance in appropriate areas, including but not limited to improved test performance of all groups and increased numbers of ethnic test takers.

(iv) If the small group is cumulative test-takers, the data shall be combined with one or two of the previous academic

years' cumulative data using the process described in clauses (i)-(iii) of this subparagraph.

(F) Effective September 1, 1999, if the first-year or cumulative number of test takers within an ethnic or gender demographic group for the current academic year is less than 30, the following method shall be used for determining the accreditation status of the entity:

(i) If the small group is first-year test takers, the number of first-year test takers from the current academic year shall be combined with the number of first-year takers from the same demographic group for the previous academic year. If the resulting number of test takers is 30 or more, the combined pass rate of the group shall be considered under paragraph (1)(A) of this subsection.

(ii) If the combined number of test takers from clause (i) of this subparagraph is less than 30, the performance of that group of test-takers will not be considered under paragraph (1)(A) of this subsection. However, the performance of those test takers is used in calculating the performance of the "all students" group at the entity and, as appropriate, in calculating the performance data for other demographic groups.

(iii) If the small group is cumulative test-takers, the data shall be combined with one or two of the previous years' cumulative data using the process described in clauses (i)-(iii) of this subparagraph and the combined pass rate of the group shall be considered under paragraph (1)(A) of this subsection.

(iv) Subparagraph (F) of this paragraph expires August 31, 2000.

(2) Effective September 1, 2002, for an entity to be "Accredited" [~~accredited~~], an acceptable proportion of the certification fields offered by an entity must indicate performance of all students within the field at either of the following levels listed in subparagraphs (A) and (B) of this paragraph:

(A) acceptable first-year pass rates for all tests taken [~~for the first time~~] during the academic year prior to the issuance of the accreditation rating, or

(B) acceptable cumulative pass rates for all tests taken for the two years prior to the issuance of the accreditation rating.

(3) An entity not meeting the performance standards for "Accredited" receives the rating of "Accredited - Under Review." An entity receiving the rating "Accredited - Under Review" for three consecutive years becomes "Not Accredited."

(4) When persons are enrolled in an entity which is "Accredited - Under Review" but then becomes "Not Accredited," [~~"Unaccredited,"~~] these persons may complete their program and be recommended for certification.

(5) An entity must wait three consecutive years before applying [~~reapplying~~] to the Board for "Accredited - Preliminary Status."

(6) If an entity disagrees with its accreditation status, the entity may appeal the determination of the accreditation status to the executive director of the Board.

(7) An entity must notify persons enrolled in an educator preparation program of any change of accreditation status.

(f) Approval of certification field.

(1) Effective September 1, 2002, for [~~For~~] a certification field to be approved, performance of all students within the certification field must be at or above specified levels for three consecutive academic years:

(A) acceptable first-year [~~time~~] pass rates in each academic year; or

(B) acceptable cumulative pass rates in each academic year.

(2) If a certification field has fewer than five first-year [~~time~~] test takers during an academic year, performance will be grouped with performance of examinees in the following year.

(3) If the performance of all students within a certification field fails to meet requirements of paragraph (1)(A) or (B) of this subsection [~~either of the levels required by paragraphs (1) and (2) of this subsection,~~] for three consecutive academic years, the entity may no longer recommend persons for certification in that field. The entity may request reconsideration if a field is no longer approved. The executive director may reinstate the field. The entity must wait two years before reapplying to offer certification in that field, but may not reapply to offer that field or any other field if the entity is "Accredited - Under Review."

(g) Commendations for success. An entity may receive commendations for success in identified areas if the entity is "Accredited." The Board will establish standards [~~expectations~~] for the following areas listed in paragraphs (1)-(4) of this subsection in which an entity may be commended.

(1) Preparation of persons for high need teaching fields. Based upon the Board's determination of fields of statewide and regional need, the entity successfully prepares a significant proportion, as established by the Board, of its candidates for certification in the fields of highest need. Areas of need will be established for periods of five years with the first period beginning September 1, 1997 through September 1, 2002.

(2) Diversity of candidates recommended for certification by an entity. A commendation will be awarded to entities meeting either of the following: [~~An entity recommends a percent of ethnic minority candidates within a specified range of the distribution of the respective groups in the student population. The diversity of the public school student population of either the state or the education service center region in which the entity is located is the basis for the comparison.~~]

(A) The entity recommends for certification a percent of ethnic minority candidates that is commendable based on a comparison with the distribution of the respective groups in the public school student population. The diversity of the population of either the state or the education service center region in which the entity is located is the basis for the comparison; or

(B) The entity recommends for certification a percent or number of ethnic minority candidates that, when compared to the percent or number of minority candidates recommended by the entity in the one or two previous years, shows growth which is commendable.

(3) Evidence of financial support for a teacher preparation program as defined by the Board.

(4) Field-based educator preparation. A significant proportion, as defined by the Board, of the faculty and candidates participating in educator preparation spend a specified amount of their time working collaboratively with practicing professionals in Texas public school classrooms.

(h) Oversight of Entity "Accredited - Under Review".

(1) The executive director of the Board shall appoint an oversight team to make recommendations and provide assistance to an entity that is "Accredited - Under Review."

(A) The executive director shall notify in writing an institution of higher education president and dean or department chair of education, an education service center executive director, and/or a superintendent of a school district of the appointment of an oversight team.

(B) Members of the oversight team, including the chair, are appointed by the executive director. The entity under review shall be responsible for the reasonable and necessary expenses of the oversight team and, when appropriate, for the expenses of any person assigned to administer and manage the educator preparation program.

(C) With the cooperation of the entity, the oversight team shall collect information about the program and develop strategies for improvement. All recommendations and reports of the progress of the program toward improvement must be provided in writing to the entity and to the executive director. The executive director shall verify if the entity is attempting to implement the recommendations of the oversight team.

(D) No later than 30 days after receiving the recommendations of an oversight team, the entity shall submit to the executive director an action plan for addressing the recommendations.

(E) No later than May 31 of each year that an entity is "Accredited - Under Review," the entity must submit to the executive director a progress report related to the recommendations of the oversight team.

(F) The executive director shall notify Texas public school districts of the change in accreditation status of a certification program.

(2) If, after one year, the executive director determines that an entity that is "Accredited - Under Review" has not fulfilled the recommendations of the oversight team, the executive director shall appoint a person to administer and manage the operations of the program.

(A) The executive director shall, based upon the type and severity of the problems of the preparation program, inform the president of the university, executive director of the education service center, or superintendent of schools of the powers and duties of the person assigned to administer and manage the educator certification program.

(B) The powers and duties of the person appointed to administer and manage the program may include overseeing daily programmatic decisions, supervision of staff, budget control or development, and curriculum-related decisions. The person may disapprove actions proposed by the program administrator or staff.

(3) An entity must achieve acceptable performance, as set by the Board, on standards required for accreditation no later than September 1 of the third year after being placed on "Accredited - Under Review" status. Considering input of the oversight team, the executive director may at any time, prior to revocation of an entity's accreditation, request that the Board limit the entity to only preparing candidates for certification in specified fields and collaborate with another entity to fully manage the program.

§229.4. Reporting Requirements.

(a) Each entity must file an annual performance report of its educator preparation program with the Board no later than June 1 following each academic year. The performance report complies with statutory requirements and provides data for a comprehensive analysis of the preparation program.

(b) The annual performance report includes the level of attainment on the six performance indicators required by statute. These indicators do not affect accreditation status unless adopted by the Board as performance measures.

(c) Performance indicators are reported by annual cohort groups and are disaggregated by gender and ethnicity (male, female, African American, Hispanic, white, and other). Performance indicators include:

(1) the number of persons who apply: the number of persons who declare an intent, pursuant to each entity's policies and procedures, to the educator preparation program their desire to be an educator;

(2) the number of persons admitted: the number of persons who meet all minimum admission criteria of the preparation program and those criteria established by the Board during an academic year;

(3) the number of persons retained: the number of persons who were admitted to and enrolled in the preparation program any time during an academic year;

(4) the number of persons completing the program: the number of persons who have completed all program requirements and passed appropriate examinations;

(5) the number of persons employed in the profession after completing the program: the number of persons employed in a public school in Texas within two years of receiving the certificate, who may or may not be assigned in the area in which they were certified; and

(6) the number of persons retained in the profession: the number of persons employed in the profession two years after initial employment and five years after initial employment. A person may be assigned in any role requiring a certificate in a Texas public school (both teaching and non-teaching roles).

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

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TRD-9903532
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 469–3001

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Chapter 230. Professional Educator Preparation and Certification

Subchapter G. Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements

19 TAC §230.199

The State Board for Educator Certification (SBEC) proposes an amendment to §230.199(d)(4), concerning Endorsements. The

proposed amendment will align requirements for the endorsement with the standards for driver education teachers specified in 19 TAC Chapter 75, Subchapter AA, §75.1002 (relating to the Commissioner's Rules Concerning Driver Education Teachers).

The TEC (§29.902(a)) authorizes the Texas Education Agency (TEA) to regulate driver education programs in the public schools and (b) authorizes TEA to develop standards for certifying public school driver education instructors, but the language does not explicitly grant TEA authority to actually issue the certificate.

After discussions with TEA staff, it was agreed that SBEC should continue to be responsible for issuing the certificate to driver education teachers. This decision was based on concerns about the need to conduct duplicative disciplinary proceedings if TEA issued the certificate - SBEC would be required to take action against an educator's math certificate(s) and TEA would be required to proceed to revoke the same educator's driver education certificate.

The proposed amendment adopts by the standards for driver education teachers specified in 19 TAC Chapter 75, Subchapter AA, §75.1002 (relating to Commissioner's Rules Concerning Driver Education Teachers). Adopting by reference the Commissioner's certification standards will allow individuals to seek employment in either a public or licensed private school after certification is obtained. Currently, individuals without the nine-semester hour certification must return for additional university training before they can teach in a licensed private school.

Pamela B. Tackett, Executive Director, State Board for Educator Certification (SBEC) has determined that for the first five-year period the rule is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the rule. Teachers seeking the driver education endorsement will realize an additional cost for tuition due to the increase from six to nine semester hours of coursework.

Ms. Tackett 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 aligned requirements for the endorsement with the standards for driver education teachers. There will be no effect on small businesses. There may be economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to: Stephanie Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The amendment is proposed under Texas Education Code (TEC), §§21.041(b)(2) and (4) and 21.044 which require the Board to propose rules that specify the classes of certificates and the requirements for issuance and renewal of certificates; §29.902 which requires the Board to issue a certificate to professional and paraprofessional personnel who conduct driver training programs in the public schools.

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

§230.199. Endorsements.

(a)-(c) (No change.)

(d) Program requirements for endorsements in special service areas.

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

(4) Driver education. An endorsement will be issued upon evidence of completion of requirements specified in 19 TAC Chapter 75, Subchapter AA, Commissioner's Rules Concerning Driver Education, §75.1002, Driver Education Teachers.

~~[(A) Certificate requirement. The driver education endorsement may be added to valid teacher certificates, special education certificates, or vocational education certificates that require a college degree.]~~

~~[(B) Professional development. The professional development sequence for the driver education endorsement shall consist of six semester hours that may include, but need not be limited to:]~~

~~*[(i)* driver and pedestrian attitudes, capabilities, and responsibilities;]~~

~~*[(ii)* automobile operation and maintenance;]~~

~~*[(iii)* defensive driving procedures;]~~

~~*[(iv)* state motor vehicle laws and city ordinances;]~~

~~*[(v)* street and highway characteristics; and]~~

~~*[(vi)* supervised student teaching in developing driving skills in nondrivers.]~~

~~[(C) Additional requirements. Additional certification requirements shall include:]~~

~~*[(i)* valid Texas driver's license; and]~~

~~*[(ii)* driving record for the three-year period immediately preceding] application that meets the evaluation standards established for Texas school bus drivers.]~~

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903533
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 469–3001

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Subchapter M. Certification of Educators In General

19 TAC §230.412

(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 State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The State Board for Educator Certification proposes the repeal of §230.412, concerning Classes of Certificates. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificates. The repeal is necessary because the existing rule will conflict with the new requirements.

The proposed repeal to Chapter 230, Subchapter M, §230.412 is being deleted because this current listing of classes of certificates conflicts with those scheduled for implementation on September 1, 1999, under 19 TAC Chapter 232, Subchapter M.

Pamela B. Tackett, Executive Director, State Board for Educator Certification (SBEC) has determined that for the first five-year period the repeal is in effect there may be fiscal implications as a result of enforcing the rule as proposed. Proper implementation will require staff and technology resources at SBEC. Districts and other providers would incur similar costs. Educators may have to pay some or all of the costs associated with continuing professional education requirements.

Ms. Tackett also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the rule will be the deletion of obsolete language. There may be economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to: Stephanie Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The repeal is proposed under Texas Education Code (TEC) §21.041(b)(9) which requires the Board to provide for continuing education requirements and §21.041(b)(4) which requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

§230.412. Classes of Certificates.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

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Pamela B. Tackett

Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469–3001

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Subchapter N. Certificate Issuance Procedures

19 TAC §§230.431, 230.433, 230.434, 230.437

The State Board for Educator Certification (SBEC) proposes amendments to §§230.431, 230.433, 230.434 and 230.437, concerning Procedures in General, Duplicate Certificates, Effective Dates of Certificates and Permit Issuance and Issuance of Certificates Based on Examinations. The SBEC also proposes the repeal of §230.438, concerning General Provisions. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificates.

Section 230.431(a)(1), which requires that the level and specific areas for which the individual is certified be shown on an individual's certificate, is being deleted. A new certificate is currently being designed to reflect the professional nature of the credential and will show the class of certificate that has been issued (classroom teacher, counselor, principal, etc.). A separate document will detail the grade levels and subject areas for classroom teachers, and will be amended each time a teacher adds a new grade level or subject area. Upon voluntarily entering the renewal process, educators holding lifetime certificates will receive the new certificate free of charge. Section 230.433 adds the word "Certification". Section 230.434(3) is also updated to include the word "certification". Section 230.437 is updated to reflect the new classes of certificates. Section 230.438 is deleted because it is no longer applicable.

Pamela B. Tackett, Executive Director, State Board for Educator Certification (SBEC) has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. Proper implementation of the above procedures would require staff and technology resources at SBEC. Districts and other providers would incur similar costs. Educators may have to pay some or all of the costs associated with continuing professional education requirements.

Ms. Tackett 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 rules will be current and updated regulations. There will be no effect on small businesses. There may be economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to: Stephanie Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(4) and (c), and §21.048 which require the State Board for Educator Certification to propose rules that specify the standards, assessments, and fees required for the issuance of an educator certificate. Texas Education Code (TEC) §21.041(b)(9) requires the Board to provide for continuing education requirements and §21.041(b)(4) requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

§230.431. Procedures in General.

(a) The State Board of Educator Certification (SBEC), in compliance with board rules, shall issue appropriate certificates to qualified individuals who meet all requirements.

(1) The certificate shall identify the name of the holder, the class of the certificate[~~, and the level and specific areas for which the individual is certified~~], and bear the signature of the SBEC chair and executive director.

(2) A certificate that is issued shall be transmitted to the applicant as expeditiously as possible.

(b) Permanent records of all certificates, permits, and supporting documentation shall be maintained by the SBEC.

§230.433. Duplicate Certificates.

A duplicate certificate shall be issued when the State Board for Educator Certification receives an appropriately completed application form and fee.

§230.434. Effective Dates of Certificates and Permit Issuance.

(a) The issuance dates of certificates.

(1) The issuance date of a certificate evaluated by the State Board for Educator Certification (SBEC) shall be the date the applicant signed the application. The date of issuance shall not precede the date all certification requirements are completed.

(2) The issuance date of a certificate recommended by an approved professional educator preparation entity shall be the date the recommending entity verifies that the applicant has satisfied all certification requirements.

(3) A certificate shall not become effective more than 60 days before the SBEC receives the application, and may not precede the date all certification, degree and examination requirements are completed.

(4) A certificate shall be valid for the entire month in which it is issued.

(b) The effective dates of permits.

(1) A permit shall become effective on the date the superintendent or designee [~~the authorized representative~~] signed the application, provided the SBEC or the appropriate education service center (ESC) receives the application within 60 days of that date.

(2) If the application is completed and signed by the applicant and superintendent or designee [~~authorized representative~~] on the date teaching duties begin, it may be kept in the school district's files until all materials for submission are acquired. A permit held by a district shall not become effective more than 60 days before the SBEC or the appropriate ESC receives the application.

(3) The district shall be notified regarding eligibility for the permit. Coverage will not be provided to districts for the employment of individuals who are ineligible for the permit requested.

(c) The authority to alter dating procedures. A certificate or permit may become effective more than 60 days before the SBEC or the appropriate ESC receives an application if the appropriate official assumes responsibility for the delay or documents it in writing.

§230.437. Issuance of Certificates Based on Examination.

(a) General provisions. A teacher who holds a valid classroom teaching certificate and a bachelor's degree may qualify for an additional teaching field or certification to teach at another level by passing the appropriate Examinations for the Certification of Educators in Texas (ExCET) for that subject. The rule shall not be used to qualify a classroom teacher [~~an individual~~] for:

(1) initial certification;

(2) vocational certification based on skill and experience;

(3) another class of certificate, as listed in 19 TAC Chapter 232, Subchapter M, of this title (relating to Types and Classes of Certificates); [~~professional service certification; or~~]

(4) certification for which no ExCET requirement has been developed.

(b)-(g) (No change.)

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

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Pamela B. Tackett
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State Board for Educator Certification
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19 TAC §230.438

(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 State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code (TEC), §21.041(b)(4) and (c), and §21.048 which require the State Board for Educator Certification to propose rules that specify the standards, assessments, and fees required for the issuance of an educator certificate. Texas Education Code (TEC) §21.041(b)(9) requires the Board to provide for continuing education requirements and §21.041(b)(4) requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

§230.438. General Provisions.

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

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Subchapter O. Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States

19 TAC §§230.461-230.463

The State Board for Educator Certification (SBEC) proposes amendments to §§230.461-230.463, concerning General Provisions, Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States and Requests for Evaluation of College Credentials. The proposed amendments will continue the provision that allows out-of-state applicants to teach or serve in the Texas public schools for one-year before completing examination requirements.

Current rules provide for the issuance of a Texas educator certificate to a person holding a degree and standard certification issued by another state. Once SBEC staff completes a review of the out-of-state credentials, the applicant must then pass the appropriate certification examinations. A temporary certificate, valid for one year, may be issued to an individual who has completed all requirements except the appropriate certification examinations. An applicant who holds a standard professional service certificate, such as counselor, educational diagnostician, or principal, issued by another state may be issued the equivalent Texas certificate in the professional service area, provided the applicant completed requirements for a basic classroom teaching certificate.

Many states do not require certification as a classroom teacher as a prerequisite for certification as an administrator, counselor or other professional service areas. Individuals holding professional service certificates issued by states that do not require the classroom certificate encounter many problems upon coming to Texas. Most of these individuals hold graduate degrees and have many years of public school experience in their particular profession.

However, without evidence of a classroom certificate, SBEC is not able to reciprocate on the out-of-state professional service certificate. In order to qualify for a Texas certificate, these individuals must serve on an emergency permit as a classroom teacher and complete an educator preparation program for a classroom teaching certificate. Once the individual has been issued a Texas classroom certificate, SBEC can then reciprocate on the out-of-state professional service credential.

The amendments will delete the classroom teaching certificate currently required for all professional service certificates based on certification from out-of-state. Applicants holding a professional service certificate issued by another state will be required to have three years of acceptable public or private school experience in the specific professional service area. The amendments also delete the provision that allows SBEC to evaluate an applicant's credentials for their initial assignment area in Texas that is outside of their certified area(s). The proposal will put into rule a policy that has been practiced for many years that allows SBEC to reciprocate on educator credentials from U.S. territories.

The proposed amendments also delete the provision in current rule, §230.463, that allows a school district to request that SBEC evaluate an applicant's credentials for an area not listed on the certificate from outside the state, provided it is part of the applicant's initial assignment area in Texas. This provision has been in effect since April 12, 1980, prior to the availability of certification by exam. It was provided as a service to school districts to give another option to requesting college deficiency plans for their out-of-state teachers serving on permits in other areas. This option is not widely used. Most out-of-state applicants choose to add certification based on passing the appropriate exam rather than completing additional college coursework from a deficiency plan. The initial assignment evaluations prepared by SBEC staff require an extensive review of transcripts and are done at no additional charge if combined with the request for review of out-of-state credentials.

Since at least the late 1970s, applicants holding degrees and acceptable educator credentials issued by territories of the United States have been given the same status as certified applicants from other states. At the current time, this policy applies to certified applicants from the territories of Guam, Puerto Rico and the Virgin Islands. The amendments place this policy into rule and will allow SBEC to continue to reciprocate on appropriate educator credentials from U.S. territories in the same manner as those issued by other states.

The SBEC has discussed issues related to the requirement for a classroom teaching certificate. The discussion has centered on the knowledge and skills that a counselor should have to effectively serve students. The SBEC also discussed the current Counselor ExCET and the fact that it does not assess knowledge and skills of the teaching and learning process. Currently, the SBEC is working with an Advisory Committee for the Counselor Committee that is discussing the issue of whether a beginning counselor in Texas should be required to have a teaching certificate and teaching experience. Recommendations developed by the Advisory Committee for the Counselor Certificate will be considered by the Board and will drive the development of a new counselor assessment. However, based on the Board's discussion, staff has revised Subchapter O to delete the classroom teaching certificate requirement for all professional service certificates based on certification from other states. Applicants holding a professional service certificate from outside the state will be required to have three years of experience in the specific professional service area in accredited public or private schools. Once the recommendations from the Advisory Committee are presented, the Board will modify counselor requirements as necessary.

The amendments provide more opportunities for out-of-state educators to become fully certified in Texas and will increase the number of educators available to school district, without comprising quality. In a time when the State of Texas is facing a serious shortage of individuals in education, SBEC believes this is a step towards increasing the number of qualified educators available for all school districts in Texas.

Pamela B. Tackett, Executive Director, State Board for Educator Certification (SBEC) has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. The cost to complete a Texas educator preparation program will be eliminated for applicants seeking Texas certification in professional service areas based on credentials from other states.

Ms. Tackett 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 rules will be allowing more opportunities for out-of-state educators to becomes fully certified in Texas. There will be no effect on small businesses. There may be economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to: Stephanie Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(5) and §21.052 which require the State Board for Educator Certification to propose rules that provide for the issuance of an educator certificate to a person holding a similar certificate issued by another state.

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

§230.461. General Provisions.

(a) A Texas educator certificate may[,based on college credentials and standard certification issued by another state department of education,] be issued to an individual who holds a college degree and an appropriate certificate or credential issued by the authorized licensing agency in another state or territory of the United States and who meets appropriate requirements specified in §230.413 of this title (relating to General Requirements) and elsewhere in this subchapter.

(b) The degree held by an applicant from another state or territory of the United States must be issued by an institution of higher education that at the time was accredited or otherwise approved by a state department of education, a recognized governmental organization, or a recognized regional accrediting organization.

(c) [(b)] The [degree and] certificate or other credential issued by the authorized licensing agency in [from] another state or territory of the United States [presented by an applicant for Texas certification must be considered standard by the issuing state department of education and] may not be a temporary permit, [a substandard certificate, or] a credential issued by a city or school district, or a certificate for which academic or other program deficiencies are indicated. [In this subchapter, the phrase "standard certificate" means certification issued by another state department of education for which no academic deficiencies are indicated.] Specific examination or renewal requirements shall not be considered academic deficiencies.

(d) [(c)] A statement, approval letter, or certification entitlement card issued by the authorized licensing agency in another state or territory of the United States [department of education] specifying eligibility for full certification upon employment or completion of specified examination requirements shall have the same standing as a [standard] certificate.

(e) [(d)] The certificate and areas of certification [from] issued by the authorized licensing agency in another state or territory of the United States [presented by an applicant for Texas certification] must be equivalent to a [credential] certificate and certification areas approved by the State Board for Educator Certification. The board shall identify the certification areas for which the applicant qualifies in Texas.

§230.462. Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States.

(a) An applicant for a Texas certificate based on [certification and college credentials from another state] a certificate issued in accordance with §230.461 of this title (relating to General Provisions) must pass the appropriate examination requirements specified in §230.5 of this title (relating to Educator Assessment).

(b) If all certification requirements are met except the appropriate examination requirements, the applicant may request issuance of a [temporary] one-year certificate[, valid for 12 months,] in one or more certification areas authorized on the out-of-state certificate.

(1) An applicant who holds a [standard out-of-state] special subject certificate issued in accordance with §230.461 of this title (relating to General Provisions) may be issued the equivalent Texas certificate in that special subject area.

(2) An applicant who holds a [standard out-of-state] professional service certificate issued in accordance with §230.461 of this subchapter may be issued the equivalent Texas certificate in that professional service area. [The preparation program upon which the out-of-state professional service certificate is based must require the individual to have completed requirements for a basic classroom teaching certificate]. The applicant must verify three creditable years of public or private school experience, as defined in Subchapter Y of this chapter (relating to Definitions), in the professional service area.

(c) [A temporary certificate authorized under this subchapter may be converted to the appropriate certificate class after all requirements, including examination requirements, have been satisfied.] After satisfying all requirements, including the examination requirements, the applicant is eligible to receive the Standard Certificate issued under Chapter 232, Subchapter M of this title (relating to the Types and Classes of Certificates Issued).

(d) An applicant issued a [temporary] one-year certificate under this section who does not complete the appropriate [portions of the Examination for the Certification of Educators in Texas (ExCET)] examination requirements [or] to establish eligibility for a [provisional or professional certificate] Standard Certificate during the validity of the [temporary] one-year certificate, is not eligible for any type of certificate or permit authorizing employment for the same certified level or areas until he or she has satisfied the appropriate examination requirements.

(e) An employing superintendent may apply for [continued employment eligibility for a teacher on] a nonrenewable permit [if the] for a teacher who does not pass the professional development portion of the Examination for the Certification of Educators in Texas (ExCET) but does pass the appropriate content specialization portions of the exam during the validity of the [temporary] one-year certificate. The nonrenewable permit shall be valid for no more than 12 months from the date the individual first attempts the professional development portion of the ExCET.

(f) An applicant shall not be required to complete the content specialization portion of the ExCET in a certification area for which he or she does not seek [continued Texas] standard certification.

(g) An applicant issued a [temporary] one-year certificate under this section who, during or subsequent to the validity of the certificate, establishes eligibility for a [provisional or professional certificate] Standard Certificate may apply for:

(1) [request] a new [temporary] one-year certificate in another certification area based on an acceptable [a] certificate from another state or territory of the United States; or

(2) [reapply for another temporary] a second one-year certificate in an area previously authorized on a [temporary] one-year certificate, provided the applicant was not assigned to the area [or] and has not attempted the appropriate [ExCET] examination requirements for that area.

§230.463. Requests for Evaluation of College Credentials.

[(a) At the request of an employing local school district, the State Board for Educator Certification (SBEC) will evaluate an applicant's credentials for an area that is not identified on the certificate from another state, provided it is the applicant's initial assignment area in a Texas public school. The SBEC will issue the Texas certificate when the applicant completes the deficiencies outlined and passes the appropriate Examination for the Certification of Educators in Texas (ExCET).]

(a) [(b)] Requests to evaluate an applicant's credentials for areas of certification that are not identified on the [out-of-state] certificate issued in accordance with §230.461 of this title (relating to General Provisions) [or are not initial assignment areas in a Texas public school] must be directed to [a college or university with] an approved Texas educator preparation program [for the certificate sought.] The appropriate Texas certificate will be issued upon recommendation by the [institution] program.

(b) [~~(c)~~] An individual who does not hold a [~~standard~~]certificate issued [~~by another state department of education~~] in accordance with §230.461 of this title (relating to General Provisions) must have his or her credentials evaluated through an [~~a college or university~~] approved [~~for professional~~] Texas educator preparation program and be recommended by the [~~institution~~] program for certification.

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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Pamela B. Tackett
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State Board for Educator Certification
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Subchapter P. Requirements for Standard [~~Provisional~~] Certificates and Specialized Assignments or Programs

19 TAC §§230.481-230.484

The State Board for Educator Certification proposes amendments to §§230.481-230.484 concerning General Provisions, Specific Requirements for Standard Certificates and Endorsements, Specific Requirements for Standard Vocational Certificates Based on Experience and Preparation in Skill Areas and Eligibility Requirements for Specialized Assignments or Programs. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificates.

Pamela B. Tackett, Executive Director, State Board for Educator Certification (SBEC) has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. Proper implementation of the above procedures would require staff and technology resources at SBEC. Districts and other providers would incur similar costs. Educators may have to pay some or all of the costs associated with continuing professional education requirements.

Ms. Tackett 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 rules will be conforming all current references to the existing Provisional Certificate to the new Standard Certificate. There will be no effect on small businesses. There may be economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to: Stephanie Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The amendments are proposed under Texas Education Code (TEC) §21.041(b)(9) which requires the Board to provide for continuing education requirements and §21.041(b)(4) which requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

§230.481. General Provisions.

(a) Standard classroom [~~Provisional~~] teacher certificates, including [~~provisional~~] special education certificates, [~~provisional~~] vocational certificates, and endorsement areas, based on completion of an approved educator preparation [~~teacher education~~] program shall require:

(1) at least a bachelor's degree and, for certain vocational certificates, preparation and experience in a skill area as specified;

(2) recommendation by an approved educator preparation program [~~teacher education institution~~]; and

(3) submission of a passing score on a comprehensive examination prescribed by the State Board for Educator Certification (SBEC) under §230.5 of this title (relating to Educator Assessment).

(b) Standard [~~Provisional~~] vocational certificates based on experience and preparation in a skill area shall require:

(1) preparation and experience in a skill area and, for certain vocational certificates, completion of a bachelor's degree;

(2) recommendation by an educator preparation program [~~a teacher education institution~~] approved to offer professional development courses required for vocational certification; and

(3) satisfactory performance on the test prescribed by the SBEC under §230.5 of this title.

§230.482. Specific Requirements for Standard [~~Provisional~~] Certificates and Endorsements.

(a) The following certificates require completion of an approved educator preparation [~~teacher education~~] program offered under Subchapter G of this chapter (relating to Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements):

(1) standard classroom [~~provisional~~] teacher certificate–elementary;

(2) standard classroom [~~provisional~~] teacher certificate–secondary;

(3) standard classroom [~~provisional~~] teacher certificate–all level;

(4) standard [~~provisional~~] special education certificates;

(5) standard [~~provisional~~] agricultural science and standard [~~provisional~~] horticultural science certificates; and

(6) standard [~~provisional~~] home economics certificate.

(b) The standard [~~provisional~~] marketing education certificate requires one of the following:

(1) completion of an approved program offered under §230.198 of this title (relating to Vocational Marketing Education Certificates); or

(2) completion of requirements in §230.483(b) of this title (relating to Specific Requirements for Standard [~~Provisional~~] Vocational Certificates Based on Experience and Preparation in Skill Areas).

(c) All endorsements require completion of an approved program offered under §230.199 of this title (relating to Endorsements)

or completion of requirements under provisions of §230.437 of this title (relating to Issuance of Certificates Based on Examination).

§230.483. Specific Requirements for Standard [~~Provisional~~] Vocational Certificates Based on Experience and Preparation in Skill Areas.

(a) [~~Provisional~~] Standard health science technology certificate.

(1) The [~~provisional~~] standard health science technology certificate shall be based on preparation and experience in the skill area and qualify the teacher to teach preemployment laboratory and cooperative training classes.

(2) (No change.)

(3) The [~~provisional~~] standard health science technology certificate shall require a professional development sequence that includes the following:

(A)-(G) (No change.)

(b) [~~Provisional~~] Standard marketing education certificate.

(1) The [~~provisional~~] standard marketing education certificate may be based on the program requirements specified in Subchapter G of this title (relating to Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements) or preparation and experience in the skill area.

(2) (No change.)

(3) The [~~provisional~~] standard marketing education certificate shall establish eligibility to teach cooperative training, coordinated vocational-academic education, preemployment laboratory, and vocational education for the handicapped in marketing and distributive education.

(c) [~~Provisional~~] Standard office education certificate.

(1) Certificates issued. The [~~provisional~~] standard office education certificate shall be based on preparation and experience in the skill area and professional development. The certificate shall be required to teach office education courses taught by the cooperative or preemployment laboratory method of instruction.

(2) Academic specialization. The [~~provisional~~] standard office education certificate shall require the following:

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

(3) (No change.)

(d) [~~Provisional~~] Standard occupational orientation certificate.

(1) General provisions. The [~~provisional~~] standard occupational orientation certificate shall be based on preparation and experience in occupational fields for which vocational education is offered and professional development.

(2) Academic specialization. The [~~provisional~~] standard occupational orientation certificate shall require that an individual:

(A)-(D) (No change.)

(3) (No change.)

(e) Provisional trades and industry certificates. A [~~provisional~~] standard trades and industry certificate shall be based on preparation and experience in the skill areas to be taught and completion of specified professional development course work.

(1) [~~Provisional~~] Standard trades and industry - preemployment laboratory certificate.

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

(2) [~~Provisional~~] Standard trades and industry - cooperative training certificate.

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

(f) (No change.)

§230.484. Eligibility Requirements for Specialized Assignments or Programs.

(a)-(c) (No change.)

(d) Requirements for eligibility to teach in specialized assignments or programs shall be as follows.

(1) (No change.)

(2) Agricultural science and technology.

(A) Horticulture. Eligibility to teach horticulture shall require a valid [~~provisional~~] standard certificate for horticultural sciences. No additional course or workshop shall be required for assignment to preemployment laboratory education (PELE) or vocational education for the handicapped programs (VEH) in horticulture.

(B)-(D) (No change.)

(3) (No change.)

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

Filed with the Office of the Secretary of State on June 14, 1999.

TRD-9903538
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 469-3001

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Subchapter U. Assignment of Public School Personnel

19 TAC §230.601

The State Board for Educator Certification proposes an amendment to §230.601, concerning Assignment of Public School Personnel. The amendment Deletes Assignment Criteria for Administrators Other than Assistant Principals, Principals, and Superintendent. The proposed amendment will delete criteria for assignment to administrative positions other than principal, assistant principal, and superintendent.

Current rules set criteria for all school district assignments of public school personnel including administrative positions such as administrative officer, instructional officer, supervisor, visiting teacher, and superintendent. Each school district must follow the current assignment table in employing all administrators.

The proposed amendment will delete assignment criteria for Administrative Officer I-VIII, Instructional Officer I-VIII, Supervisor, Vocational, Administrator, Vocational Director, Vocational Supervisor, Visiting Teacher, Special Education Director and Special Education Supervisor. Each school district will be respon-

sible for establishing requirements for administrative positions other than superintendent, principal, and assistant principal.

With the different employment needs and resources at all of the different school districts in Texas, this amendment will give flexibility to each school district to determine the requirements of employment for administrators other than principal, assistant principal, and superintendent. It is important to note that SBEC will continue establishing strict assignment criteria for the principal, assistant principal, and superintendent.

Pamela B. Tackett, Executive Director, State Board for Educator Certification (SBEC) has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Ms. Tackett 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 flexibility to each school district to determine the requirements of employment for administrators. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to: Stephanie Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(2) which requires the State Board for Educator Certification to propose rules that specify the classes of certificates to be offered.

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

§230.601. Assignment of Public School Personnel.

(a)-(e) (No change.)

(f) A public school employee must have the appropriate credentials for his or her current assignment specified in the charts in this section, unless the appropriate permit has been issued under Subchapter Q of this chapter (relating to Permits).
Figure: 19 TAC §230.601(f)

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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Pamela B. Tackett
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State Board for Educator Certification
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For further information, please call: (512) 469-3001

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Chapter 232. General Requirements Applicable to All Certificates Issued

Subchapter R. Certificate Renewal and Continuing Professional Education Requirements

The State Board for Educator Certification proposes amendments to §§232.800, 232.810, 230.830, 232.850, 232.860, 232.870, 232.880 and 232.890, concerning Certificate Renewal and Continuing Professional Education Requirements. The SBEC also proposes the repeal of §232.900, concerning Effective Date and new §232.900, concerning Pilot Program. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificates.

Section 232.800(b) adds language indicating that renewal requirements apply to all individuals holding any class of Standard Certificate. Section 232.810(c) changes the words, "publish a report on" to "make available". The amendment to §232.830 removes an obsolete date and updates the rule. Section 232.850(a) changes restrictive language from "must" to "should" concerning the number of clock hours of continuing education to be completed each year. Section 232.860(d), (f), and (g) deletes restrictive language "each year" for the percentage of hours that can be accumulated for independent study, presenting a CPE activity, mentoring, or serving as a principal assessor. The limitation is applied to the full five-year renewal period. Section 232.870(a)(7) adds language to provide a means to designate professional associations as approved providers. Section 232.870(c)(4) deletes the requirement for providers to maintain documents. Section 232.880(c) changes language to allow the executive director to review the documentation required for renewal. The amendment to §232.890 removes an obsolete date. Section 232.900: adds a new section authorizing the executive director to approve school districts as pilot sites for alternative approaches to deliver required continuing education activities.

Pamela B. Tackett, Executive Director, State Board for Educator Certification (SBEC) has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. Proper implementation of the above procedures would require staff and technology resources at SBEC. Districts and other providers would incur similar costs. Educators may have to pay some or all of the costs associated with continuing professional education requirements.

Ms. Tackett 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 rules will be implementation of the Standard Certificate which must be renewed every five years and the ceasing of issuance of lifetime certificates. There will be no effect on small businesses. There may be anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to: Stephanie Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

19 TAC §§232.800, 232.810, 232.830, 232.850, 232.860, 232.870, 232.880, 232.890

The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(4) and (9) which requires the State Board for Educator Certification to specify requirements for the renewal of an educator certificate, and TEC §21.045 which requires the Board to identify courses and programs that fulfill educators' continuing education requirements. The Texas Education Code (TEC) §21.041(b)(9) requires the Board to provide for continuing education requirements and §21.041(b)(4) requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish

a process for identifying courses and programs that fulfill continuing education requirements.

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

§232.800. General Provisions.

(a) All educators should model the philosophy of lifelong learning; therefore, participation in professional development activities is expected of all educators. Activities must focus on the need of each educator to continually update his or her knowledge of current content, best practices, research, and technology that is relevant to his or her individual role as an educator. The State Board for Educator Certification shall ensure that requirements for renewal and continuing professional education are flexible to allow each individual educator to identify the activities he/she will complete to satisfy the Board's requirements.

(b) This chapter provides the minimum requirements necessary to renew any class of certificate issued by the board. [~~The standard certificate must be renewed every five years, subject to the requirements of this subchapter.~~]

(c) Each individual who holds a standard certificate(s) is responsible for renewing the certificate(s) and paying a fee for late renewal. Failure to receive notice of the renewal requirement or deadline does not excuse the individual's obligation to renew or pay applicable fees.

(d) The board may deny renewal if the educator fails to comply with the requirements of this subchapter.

(e) The deadlines established for renewal, late renewals, and fees are established by procedures approved by the board and are subject to change.

(f) The board shall deny or cancel the renewal of an educator's certificate(s) if required by the Texas Education Code (TEC) §57.491, regarding defaults on guaranteed student loans.

(g) The board shall deny or cancel the renewal of an educator's certificate(s) suspended in accordance with Chapter 232, Family Code, regarding failure to pay child support.

(h) Reinstatements of Texas lifetime certificates revoked at any time shall be reissued as standard certificates and subject to the requirements of this subchapter.

(i) Pursuant to TEC §21.003(a), an educator employed by a Texas public school district who fails to satisfy each of the requirements to renew his or her standard certificate(s) by the renewal date moves to inactive status and is ineligible for employment in a Texas public school district in a position for which a certificate is required until all appropriate requirements are satisfied.

§232.810. Voluntary Renewal of Current Texas Educators.

(a) Educators holding a valid Texas lifetime certificate issued prior to September 1, 1999, may voluntarily comply with the requirements of this subchapter.

(b) The executive director shall adopt procedures to implement not later than September 1, 1999, voluntary renewal for current educators who hold a certificate(s) issued prior to September 1, 1999. Upon an individual's notification to the board of the intent to renew, the board shall issue the appropriate standard certificate(s). An educator eligible under subsection (a) for voluntary renewal may choose to renew his or her standard certificate(s) every five years or at any time may revert to the lifetime certificate.

(c) Not later than November 1 of each year, the executive director shall [~~publish a report on~~] make available the number of educators voluntarily renewing certificates under this section during the preceding fiscal year.

§232.830. Requirements for Certificate Renewal.

(a) The [~~Not later than January 1, 1999, the~~] executive director shall develop [~~submit to the board proposed~~] procedures to:

(1) notify educators at least one year prior to the expiration of their renewal period;

(2) consider requests for hardship exemptions from continuing professional education requirements;

(3) confirm compliance with all renewal requirements pursuant to this subchapter;

(4) notify educators who are not renewed due to noncompliance with this section; and

(5) verify that educators applying for reactivation of certificate(s) under §232.840(a) of this title (relating to Inactive Status and Late Renewal) are in compliance with subsection (b)(2)-(6) of this section.

(b) To be eligible for renewal, an educator must:

(1) satisfy continuing professional education requirements, pursuant to §232.850 of this title (relating to Number and Content of Required Continuing Professional Education Hours);

(2) hold a valid standard certificate that has not been suspended or revoked by lawful authority;

(3) not be a defendant in a formal disciplinary action, which commences when notice of the filing of a petition is mailed by the board pursuant to Chapters 137 and 157 of this title (relating to Professional Educator Preparation and Certification and Hearings and Appeals);

(4) successfully resolve any criminal history, as defined by §230.414 of this title (relating to Criminal Background);

(5) not be in default on a guaranteed student loan, unless repayment arrangements have been made, pursuant to the Texas Education Code, §57.491;

(6) not be in arrears of child support, pursuant to the Family Code, Chapter 232; and

(7) pay the renewal fee, pursuant to §232.890 of this title (relating to Fees Payable Upon Certificate Renewal or Reactivation), which shall be a single fee regardless of the number of certificates being renewed.

(c) The executive director shall renew the certificate(s) of an educator who meets all requirements of this subchapter.

(d) The board shall stay the renewal of an educator's certificate(s) who fails to comply with subsection (b)(3) of this section, pending resolution of the disciplinary action. A certificate that is not suspended or revoked as a result of disciplinary action shall be renewed provided that all other requirements have been satisfied. Payment of a late fee shall not be required if resolution of any disciplinary action caused the renewal to occur after the renewal period had expired, except in cases involving subsection (b)(5)-(6) of this section.

§232.850. Number and Content of Required Continuing Professional Education Hours.

(a) Standard certificate. At least 150 clock hours of continuing professional education (CPE) must be completed during each five-year renewal period. Educators [~~must~~] should complete a minimum of 20 clock hours of CPE each year of the renewal period. An educator renewing multiple certificates [~~must~~] should complete a minimum of five CPE clock hours each year in the content area knowledge and skills for each certificate being renewed.

(b) One semester credit hour earned at an accredited institution of higher education is equivalent to 15 CPE clock hours.

(c) At least 80% of the CPE activities should [~~must~~] be directly related to the certificate(s) being renewed and focus on the standards required for the initial issuance of the certificate(s), including [~~several of the following listed in paragraphs (1)-(12) of this subsection~~]:

(1) content area knowledge and skills;

(2) professional ethics and standards of conduct;

(3) professional development, which should encompass topics such as the following:

(A) [~~(3)~~] district and campus priorities and objectives;

(B) [~~(4)~~] child development, including research on how children learn;

(C) [~~(5)~~] discipline management;

(D) [~~(6)~~] applicable federal and state laws;

(E) [~~(7)~~] diversity and special needs of student populations;

(F) [~~(8)~~] increasing and maintaining parental involvement;

(G) [~~(9)~~] integration of technology into educational practices;

(H) [~~(10)~~] ensuring that students read on or above grade level;

(I) [~~(11)~~] diagnosing and removing obstacles to student achievement; and

(J) [~~(12)~~] instructional techniques.

(d) Educators are encouraged to identify CPE activities based on results of the annual appraisal required under TEC, Chapter 21, Subchapter H.

§232.860. Types of Acceptable Continuing Professional Education (CPE) Activities.

(a) Participation in institutes, workshops, seminars, conferences, in-service or staff development activities given by an approved provider or sponsor, pursuant to §232.870 of this title (relating to Approval of Continuing Professional Education Provider or Sponsor), which are related to or enhance the professional knowledge and skills of the educator [~~are acceptable CPE activities~~].

(b) Completion of undergraduate courses in the content area knowledge and skills related to the certificate(s) being renewed, [~~post~~]-graduate courses, or training programs which are taken through an accredited institution of higher education [~~are acceptable CPE activities~~].

(c) Participation in interactive distance learning, video conferencing, or on-line activities or conferences [~~are acceptable CPE activities~~].

(d) Independent study, not to exceed 20% of the required clock hours [~~each year~~], which may include self-study of relevant professional materials (books, journals, periodicals, video and audio tapes, computer software, and on-line information) or authoring a published work [~~are acceptable CPE activities~~].

(e) Development of curriculum or CPE training materials [~~is an acceptable CPE activity~~].

(f) Teaching or presenting a CPE activity described in subsection (a) or (b) of this section, not to exceed 10% of the required clock hours [~~each year is an acceptable CPE activity~~].

(g) Providing professional guidance as a mentor educator, not to exceed 30% of the required clock hours [~~each year is an acceptable CPE activity~~].

(h) Serving as an assessor under Chapter 241, §241.35 of this title (relating to the Principal Certificate), not to exceed 10% of the required clock hours.

§232.870. Approval of Continuing Professional Education Provider or Sponsor.

(a) The following may provide and/or sponsor continuing professional education activities and must comply with the provisions of this section:

(1) State Board for Educator Certification;

(2) Texas Education Agency;

(3) accredited institutions of higher education;

(4) regional education service centers;

(5) Texas public school districts - to be creditable toward CPE requirements, school district in-service and/or staff development activities must be developed, approved, and conducted in accordance with Texas Education Code, Chapter 21, §21.451;

(6) private schools, as defined by Chapter 230, Subchapter Y, §230.801 of this title (relating to Definitions); [~~and~~]

(7) professional membership associations that have offered professional development in Texas for at least five years and have tax-exempt status under 26 United States Code §501(C)(3)-(C)(6), or a state association affiliated with a national association with tax-exempt status; and

(8) [~~(7)~~] entities approved under subsection (b) of this section.

(b) The [~~Not later than January 1, 1999, the~~] executive director shall develop [~~adopt~~] procedures to approve as providers and/or sponsors [~~national or statewide associations, boards, or organizations representing members of the education profession as well as~~] any other person, agency, or entity seeking to offer continuing professional education activities pursuant to the requirements of this subchapter.

(c) The procedures adopted by the executive director must require all providers or sponsors to:

(1) notify the executive director of the intent to offer CPE activities;

(2) affirm compliance with all applicable statutes and rules;

(3) prohibit discrimination in the provision of CPE activities to any certified educator;

(4) document [maintain for three years documentation] that each CPE activity:

(A) complies with applicable board rules;

(B) contributes to the advancement of professional knowledge and skills identified by standards adopted by the board for each certificate;

(C) is developed and presented by persons who are appropriately knowledgeable in the subject matter of the training being offered; and

(D) specifies the content under §232.850(d) of this title (relating to Number and Content of Required Continuing Professional Education Hours) and number of creditable CPE clock hours [;and]

[(E) lists the educators in attendance for CPE credit.]

(5) on a biennial or more frequent basis conduct a comprehensive, in-depth self-study to assess the CPE needs and priorities of educators served by the provider as well as the quality of the CPE activities offered.

(d) At the conclusion of each activity offered for CPE credit, the provider or sponsor must provide to each educator in attendance written documentation listing the content of the activity and the number of clock hours creditable toward CPE requirements. The executive director shall establish the content for a [standard] record of completion that must be utilized by all providers and sponsors.

(e) The executive director's failure to approve a provider or sponsor does not entitle that provider or sponsor to a contested-case hearing before the board or a person designated by the board to conduct contested-case hearings.

(f) The [Not later than January 1, 1999, the] executive director shall develop [adopt] procedures to receive and investigate complaints against a provider or sponsor alleging noncompliance with this section. If [The procedures shall include a list of available sanctions if] the investigation determines that the provider or sponsor is operating in violation of any applicable provision of state law or rule, the executive director may withdraw the approval granted under this section to the provider or sponsor.

[(g) Not later than January 1, 1999, the executive director shall adopt procedures to annually audit compliance with this section of not more than 10% of the approved providers and sponsors. Any provider or sponsor found to be in noncompliance shall be subject to the sanctions developed under subsection (f) of this section].

§232.880. Verification of Renewal Requirements.

(a) Written documentation of completion of all activities applied toward continuing professional education (CPE) requirements shall be maintained by each educator.

(b) By the date renewal is required, the educator shall verify through an affidavit in a manner determined by the executive director whether he or she is in compliance with renewal requirements, including CPE. If it is determined that an educator falsified any information submitted on the affidavit, the educator could be subject to criminal liability and sanction under §230.414 of this title (relating to Certificates for Persons with Criminal Background).

(c) The executive director at any time may review [shall audit] the [required] documentation required for renewal under this subchapter [of not more than 2.0% of educators renewed from September 1 - August 31 each year.]

[(d) Not later than January 1, 1999, the executive director shall submit to the board proposed rules and procedures to administer this section.]

§232.890. Fees Payable Upon Certificate Renewal or Reactivation.

[Not later than January 1, 1999, the] The executive director shall submit to the board [proposed rules and approve procedures to assess] the [following] recommended amount of each fee [fees] listed in paragraphs (1)-(4) of this section:

(1) renewal fee – payable at the time of renewal to support the functions of the Board, including renewal, investigations, and enforcement.

(2) reactivation of inactive certificate – payable upon application to reactivate.

(3) late renewal fee.

(4) reinstatement following restitution for default on student loan or nonpayment of child support.

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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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469-3001

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19 TAC §232.900

(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 State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code (TEC), §21.041(b)(4) and (9) which requires the State Board for Educator Certification to specify requirements for the renewal of an educator certificate, and TEC §21.045 which requires the Board to identify courses and programs that fulfill educators' continuing education requirements. The Texas Education Code (TEC) §21.041(b)(9) requires the Board to provide for continuing education requirements and §21.041(b)(4) requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

No other statues articles or codes are affected by the proposed repeal.

§232.900. Effective Date.

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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Pamela B. Tackett
Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469-3001

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The new rule is proposed under the Texas Education Code (TEC), §21.041(b)(4) and (9) which requires the State Board for Educator Certification to specify requirements for the renewal of an educator certificate, and TEC §21.045 which requires the Board to identify courses and programs that fulfill educators' continuing education requirements. The Texas Education Code (TEC) §21.041(b)(9) requires the Board to provide for continuing education requirements and §21.041(b)(4) requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements.

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

§232.900. Pilot Program.

The executive director may approve a school district under §232.870 of this title (relating to Approval of Continuing Professional Education Provider or Sponsor) to develop alternative approaches that allow educators to satisfy the continuing professional development requirements of 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 June 14, 1999.

TRD-9903542

Pamela B. Tackett

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State Board for Educator Certification

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For further information, please call: (512) 469-3001

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Chapter 241. Principal Certificate

19 TAC §§241.1, 241.5, 241.20, 241.30, 241.35, 241.40

The State Board for Educator Certification proposes amendments to §§241.1, 241.5, 241.20, 241.30, 241.35 and 241.40, concerning Principal Certificate. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificates. The amendments propose the deletion of language in existing rules that conflict with the new requirements.

Section 241.1 eliminates subsection (d). Section 241.5 eliminates subsection (a)(3). Section 241.5(a)(3) is deleted. The Board does not have statutory authority to conduct criminal history checks as a condition of admission to an educator preparation program. Section 241.30(a)-(c) has been rewritten to clarify that individuals employed as assistant principals or principals - whether before or after September 1, 1999 - must complete the assessment process and develop an individual growth plan. Section 241.35(c) adds language requiring each assessment provider to report to SBEC a list of individuals who have completed an assessment. Section 241.40(a)-(b) changes the implementation date for issuance of the Standard Principal Certificate, based on the last Board meeting. The Standard Mid-Management Certificate will be issued from September 1, 1999 through August 31, 2000.

Pamela B. Tackett, Executive Director, State Board for Educator Certification (SBEC) has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. Proper implementation of the above procedures would require staff and technology resources at SBEC. Districts and other providers would incur similar costs. Educators may have to pay some or all of the costs associated with continuing professional education requirements.

Ms. Tackett 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 rules will be update rules and regulations. There will be no effect on small businesses. There may be anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to: Stephanie Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The amendments are proposed under Texas Education Code (TEC) §21.041(b)(9) which requires the Board to provide for continuing education requirements and §21.041(b)(4) which requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements. TEC §21.054(b) requires that continuing education for principals be based on an individual assessment at least once every five years and that an individualized professional growth plan be developed based on the assessment results.

No other statues, articles or codes are affected by the proposed amendments.

§241.1. General Provisions.

(a) Due to the critical role the principal plays in campus effectiveness and student achievement, and consistent with the Texas Education Code (TEC) §21.046(c), the rules adopted by the State Board for Educator Certification will ensure that each candidate for the Principal Certificate is of the highest caliber and possesses the knowledge and skills necessary for success.

(b) As required by TEC §21.046(b)(1)-(6), the standards identified in §241.15 of this title (relating to Standards for the Principal Certificate) emphasize instructional leadership; administration, supervision, and communication skills; curriculum and instruction management; performance evaluation; organization; and fiscal management.

(c) Each individual serving as a principal or assistant principal is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both campus leadership and student learning is essential.

~~[(d) The Principal Certificate shall be the appropriate certificate for employment as an assistant principal or principal, pursuant to TEC§21.003(a).]~~

§241.5. Minimum Requirements for Admission to a Principal Preparation Program.

(a) Prior to admission to a preparation program leading to the Principal Certificate, an individual must:

(1) hold a baccalaureate degree from an accredited institution of higher education; [and]

(2) demonstrate an acceptable combination of a score on a nationally-normed assessment and grade point average, as determined by the preparation program[; and]

[(3) successfully resolve any criminal history, as defined by §249.23 of this title (relating to Criminal Background).]

(b)-(c) (No change.)

§241.20. Requirements for the Issuance of the [Provisional] Conditional Principal Certificate and the Induction Period.

(a) To be eligible to receive the [Provisional] Conditional Principal Certificate, the individual must:

(1) successfully complete the assessments required under Chapter 230, Subchapter A, §230.5 of this title (relating to Educator Assessment); and

(2) have two years of creditable teaching experience as a classroom teacher, as defined by Chapter 230, Subchapter Y of this title (relating to Definitions).

(b) The induction period must occur during employment as an assistant principal or principal in a Texas public or private school, as defined by Chapter 230, Subchapter Y of this title. An individual seeking to enter the induction period more than five years after the date of issuance of the [Provisional] Conditional Principal Certificate must be approved by the educator preparation program that recommended him or her for the certificate. To ensure that the individual possesses the knowledge and skills identified in the standards under §241.15 of this title (relating to Standards for the Principal Certificate), the preparation program may require the individual to satisfy certain requirements prior to entering and/or during the induction period.

§241.30. Requirements to Renew the Standard Principal Certificate.

(a) Each individual who holds the Standard Principal or Mid-Management Certificate, issued on or after September 1, 1999, is subject to Chapter 232, Subchapter R of this title (relating to Certificate Renewal and Continuing Professional Education Requirements), except that 200 hours of continuing professional education must be completed every five years.

(b) An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, and who is employed as a principal or assistant principal:

(1) must complete an [the] assessment [described in] approved under §241.35 of this title (relating to Assessment Process Definition and Approval of Individual Assessments) and develop a professional growth plan as described in subsection (e) no later than August 31, 2004 and once in each subsequent five year period; and

(2) may voluntarily [voluntary] comply with the requirements of [this section] subsection (a) under procedures adopted by the executive director under Subchapter R, §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators). The executive director shall report to the employing school district those individuals who choose to renew under this subsection.

(c) An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, and who is not employed as an assistant principal or principal may voluntarily comply with the requirements of this section under procedures adopted by the executive director under Subchapter R, §232.810 of this title. [To satisfy the requirements of this section, an individual must complete 200 clock hours of continuing professional education every five years. The activities must fulfill the professional growth plan developed under subsection (e).]

(d) Individuals holding the Standard Principal Certificate or Standard Mid-Management must select an assessment from the list approved under §241.35 of this title and [must] should participate in the assessment the first year of employment as a principal or assistant principal. Follow-up assessments should be completed in the first year of each five-year renewal period. The individual seeking to renew is solely responsible for selecting the assessment used to satisfy the requirements of this subsection.

(e) Based on the results of the assessment required under subsection (d) of this section, each individual shall develop a professional growth plan which [includes components adopted by the executive director. The plan must be] is directly related to the standards identified in §241.15 of this title (relating to Standards for the Principal Certificate), and must allow for the prioritization of professional growth needs.

(f) Consistent with TEC §21.054(b), the results of the individual assessment and the professional growth plan shall be used exclusively for professional growth purposes, and may only be released with the approval of the individual assessed.

§241.35. Assessment Process Definition and Approval of Individual Assessments.

(a) The individual assessment process determines primarily through a series of job-like activities the presence of knowledge and skills directly related to the standards identified in §241.15 of this title (relating to Standards for the Principal Certificate). The assessment process will include a structured self-assessment and may also include other job-related activities as appropriate. Job-related activities must also determine the presence of skills related to the standards identified in §241.15 of this title. The assessment must be conducted and completed within a 30-day time period.

(b) [Not later than January 1, 1999, the] The executive director shall implement procedures to approve the individual assessments that may be used to satisfy §241.30(d) of this title (relating to Requirements to Renew the Standards Principal Certificate). The executive director shall adopt procedures to receive and investigate complaints that allege noncompliance with this section, including available sanctions against the assessment provider if the investigation determines noncompliance has occurred.

(c) Upon completion, the assessment provider must report to SBEC the individuals who have completed an approved assessment.

(d) [(c)] The following characterize an appropriate assessment and must be included in the approval criteria adopted by the executive director:

(1) performance is analyzed solely on the presence of defined skills embedded in the assessment activities;

(2) standards of performance on defined skills are measured in a consistent manner;

(3) a minimum of two assessors integrate their analyses of data for the individual being assessed;

(4) assessors are chosen by the assessment provider and must successfully demonstrate both a strong familiarity with the principalship and leadership skills and are in no way involved in evaluation activities or employment decisions affecting the principal being assessed;

(5) assessors are trained by the assessment provider and must successfully demonstrate acceptable performance for the following assessor duties:

(A) assessment process procedures;

(B) analysis of performance of individuals being assessed in job-like activities;

(C) integration of data from job-like and job-related activities; and

(D) development of detailed feedback related to the standards identified in §241.15 of this title.

(6) structured feedback provides detailed results for each of the standards assessed, compares the results with the self-assessment required under this section, and includes a series of recommendations identifying specific professional development activities that should be considered in the development of the professional growth plan required under §241.30(d) of this title; and

(7) documentation verifies that the assessment process has been field tested for appropriate content and design.

§241.40. Implementation Dates.

(a) September 1, 1999 – §241.1 of this title (relating to General Provisions); [~~§241.25(1) of this title (relating to Requirements for Issuance of the Standard Principal Certificate);~~] §241.30 of this title (relating to Requirements to Renew the Standard Principal Certificate); and §241.35 of this title (relating to Assessment Process Definition and Approval of Individual Assessments).

(b) September 1, 2000 – §241.5 of this title (relating to Minimum Requirements for Admission to a Principal Preparation Program); §241.10 of this title (relating to Preparation Requirements); and §241.15 of this title (relating to Standards for the Principal Certificate); §241.25(1) of this title (relating to Requirements for Issuance of the Standard Principal Certificate).

(c) September 1, 2001 – §241.20 of this title (relating to Requirements for Issuance of the [~~Provisional~~] Conditional Principal Certificate and the Induction Period.

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

Filed with the Office of the Secretary of State on June 14, 1999.

TRD-9903543
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 469-3001

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Chapter 242. Superintendent Certificate

19 TAC §§242.5, 242.10, 242.15, 242.20, 242.25, 242.30

The State Board for Educator Certification proposes amendments to §§242.5, 242.10, 242.15, 242.20, 242.25 and 242.30, concerning Superintendent Certificate. On September 1, 1999, the Board will implement the Standard Certificate which must be renewed every five years, and cease issuing lifetime certificate. The amendments also propose the deletion of language in existing rules that conflict with the new requirements

Section 242.5(b) changes the word "provisional" to "Conditional" while subsection (e) is rewritten. Section 242.10 deletes subsection (c). Section 242.15 adds the word "Standard" to "Superintendent Certificate". Section 242.20 changes the word "candidate" to "individual". Section 242.25 clarifies the mentoring requirements for first-time superintendents. Section 242.30(e) deletes the requirement that SBEC place a designation of "exemplary" on the certificate or service record of those superintendents who voluntarily comply with renewal requirements. This requirement is not contained in the rules governing teachers and principals. The Board recommends that consistent language be used in all three rules regarding placing a designation on the certificate of those educators that voluntarily comply with renewal requirements. Both the general Certificate Renewal rule and the Principal rule require that SBEC report voluntary compliance of educators, but neither require placement of a designation on the certificate. The Board recommends that this language be deleted from the Superintendent rule, with the understanding that the virtual certificate will be designed to clearly show when an educator has voluntarily complied with renewal requirements.

Pamela B. Tackett, Executive Director, State Board for Educator Certification (SBEC) has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. Proper implementation of the above procedures would require staff and technology resources at SBEC. Districts and other providers would incur similar costs. Educators may have to pay some or all of the costs associated with continuing professional education requirements.

Ms. Tackett 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 rules will be current and updated regulations. There will be no effect on small businesses. There may be anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to: Stephanie Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The amendments are proposed under Texas Education Code (TEC) §21.041(b)(9) which requires the Board to provide for continuing education requirements and §21.041(b)(4) which requires the Board to specify the requirements for the renewal of a certificate. TEC §21.054(a) requires the SBEC to establish a process for identifying courses and programs that fulfill continuing education requirements. TEC §21.054(b) requires that continuing education for principals be based on an individual assessment at least once every five years and that an individualized professional growth plan be developed based on the assessment results.

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

§242.5. Minimum Requirements for Admission to a Superintendent Preparation Program.

(a) Successful completion of an assessment that is based upon characteristics of effective educational leaders.

(b) Hold, at a minimum, a [~~provisional~~] Conditional Principal Certificate, issued under Chapter 241 of this title (relating to Principal Certificate).

(c) Hold, at a minimum, a Master's degree from an accredited institution of higher education.

(d) As determined by the preparation program, an acceptable combination of scores from a nationally-normed assessment and grade point average.

(e) Each preparation program must develop and implement specific criteria and procedures that allow admitted individuals to substitute experience and/or professional training directly related to the standards identified in §242.15 of this title (relating to Standards Required for the Superintendent Certificate) for part of the preparation requirements. [~~Successfully resolve any criminal history, as defined by §249.23 of this title (relating to Representation of Parties).~~]

§242.10. Preparation Program Requirements.

(a) The design of the superintendency preparation program resides with the SBEC-approved educator preparation program(s)and curricula and coursework shall be based upon the standards in §242.15 of this title (relating to Standards Required for the Superintendent Certificate).

(b) The superintendency shall include a field-based practicum whereby candidates must demonstrate proficiency in each of the eight standards in §242.15 of this title.

[~~(c) Each preparation program must develop and implement specific criteria and procedures that allow admitted individuals to substitute experience and/or professional training directly related to the standards identified in §242.15 of this title (relating to Standards Required for the Superintendent Certificate) for part of the preparation requirements.~~]

§242.15. Standards Required for the Superintendent Certificate.

(a) The knowledge and skills identified in this section must be used by the Board as the basis for developing the assessment(s) required to obtain the Standard Superintendent Certificate.

(b)-(i) (No change.)

§242.20. Requirements for the Standard Superintendent Certificate.

(a) The [~~candidate~~] individual shall satisfactorily complete an assessment based on the standards identified in §242.15 of this title (relating to Standards Required for the Superintendent Certificate).

(b) The [~~candidate~~] individual shall successfully complete an SBEC-approved superintendent preparation program and be recommended for certification by that program.

§242.25. Requirements for the First-Time Superintendent in Texas.

(a) First-time superintendents (including the first time in the state) shall participate in a one-year mentorship [~~to~~] which should include at least 36 clock hours of professional development directly related to the standards identified in §242.15 of this title (relating to Standards Required for the Superintendent Certificate).

(b) During [~~this~~] the one-year mentorship, the superintendent [~~must~~] should have contact with his or her mentor at least [~~twelve times~~] once a month. The mentorship program [~~for first-year superintendents~~] must be completed within the first 18 months of employment in the superintendency in order to maintain the standard certificate.

(c) Experienced superintendents willing to serve as mentors must participate in training for the role.

§242.30. Requirements for Continuing Education and the Renewal of the Standard Superintendent Certificate.

(a) Each individual who holds the Standard Superintendent Certificate issued on or after September 1, 1999, and who is employed as a superintendent by a Texas public school district is subject to the requirements of Chapter 232, Subchapter R of this title (relating to Certificate Renewal and Continuing Professional Education) except §232.830(d) of this title (relating to Requirements for Certificate Renewal).

(b) An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, may voluntarily comply with the requirements of this section under procedures adopted by the executive director under §232.810, Subchapter R, of this title (relating to Voluntary Renewal of Current Texas Educators).

(c) To satisfy the requirements of this section, an individual must complete 200 clock hours of continuing professional education every five years directly related to the standards in §242.15 of this title (relating to Standards Required for the Superintendent Certificate).

(d) If an individual employed as a superintendent in a Texas public school does not meet the requirements, the [~~SBEC~~] executive director will notify that superintendent's board of trustees.

[~~(e) For superintendents who meet or exceed these requirements, an exemplary designation using a format approved by the executive director shall be placed on the individual's certificate or service record.~~]

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

Filed with the Office of the Secretary of State on June 14, 1999.

TRD-9903544
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 469-3001

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 102. Fees

22 TAC §102.1

The State Board of Dental Examiners proposed amendments to §102.1, concerning fees. The proposed amendments are to subsections (a)(2) and (b)(2), to raise, by $1.00, the annual renewal fee for dentists and dental hygienists.

Jeffry Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five year period the rule is in effect the fiscal implications for state or local government as a result of enforcing the rule will be annual increase in revenue to the State Board of Dental Examiners of $21,052.

Mr. Hill has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure that the fees collected by the agency will meet or exceed agency operating costs.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred they will not be of such magnitude to impact the economic viability of a small business. Therefore, the State Board of Dental Examiners has determined that compliance with the proposed amended rule

will not have an adverse economic impact on small businesses, when compared to large businesses, as the cost of compliance, if any, will be minimal.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas, 78701, 512-463-6400. To be considered all comments must be received by the State Board of Dental Examiners on or before July 25, 1999.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

The proposed amended rule does not affect other statutes, articles, or codes.

§102.1. Fee Schedule.

(a) Dentists

(1) (No change.)

(2) annual registration: $71 [~~$70~~]

(3)-(8) (No change.)

(b) Dental Hygienists

(1) (No change.)

(2) annual registration: $42 [~~$41~~]

(3)-(7) (No change.)

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

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903432
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 463-6400

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Chapter 109. Conduct

Subchapter T. Agreements with Non-dentists

22 TAC §109.500

The State Board of Dental Examiners proposes new Subchapter T, Agreements with Non-Dentists, §109.500, concerning management service agreements.

Jeffry R. Hill, Executive Director, State Board of Dental 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 the rule.

Mr. Hill has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to clarify the activities that individuals or entities having management service contracts or agreements with a dentist or an organization providing dental services will result in the contract management practicing dentistry in violation of the Dental Practice Act.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred they will not be of such magnitude to impact the economic viability of a small business. Therefore the State Board of Dental Examiners has determined that compliance with the proposed new rule will not have an adverse economic impact on small businesses when compared to large businesses as the cost of compliance, if any, will be minimal.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas, 78701, 512-463-6400. To be considered all comments and written request for public hearing must be received by the State Board of Dental Examiners on or before July 25, 1999.

The new rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act, and Article 4551a which defines the practice of dentistry.

The proposed new rule does not affect other statutes, articles, or codes.

§109.500. Management Service Agreement.

(a) For the purposes of this rule, the term dentist shall include the following:

(1) a dentist licensed by the State Board of Dental Examiners;

(2) a professional corporation wholly owned by one or more dentists;

(3) other entities composed of wholly owned by, or controlled by a dentist or dentists.

(b) Any dentist entering into any contract, partnership or other agreement which allows any person other than a dentist any one or more of the following rights, powers or authorities shall be presumed to have violated the provisions of the Dental Practice Act, Article 4551a regarding controlling, attempting to control, influencing, attempting to influence or otherwise interfering with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition:

(1) controlling, owning or setting any conditions for access to or the specific contents of dental records of patients of a dentist.

(2) setting a maximum or other standardized time for the performance of specific dental procedures.

(3) placing any limitations or requirements on treatments, referrals, or consultations except those based on the professional judgment of the dentist.

(4) limiting or imposing requirements concerning the type or scope of dental treatment, procedures or services which may be recommended, prescribed, directed or performed, except that a dentist may limit the dentist's practice or the practice of a dentist employed by or contracting with the dentist to certain procedures or the treatment of certain dental diseases.

(5) limiting or imposing requirements concerning the supplies, instruments or equipment deemed reasonably necessary by a dentist to provide diagnoses and treatment of the patients of the dentist.

(6) limiting or imposing requirements for the professional training deemed necessary by the dentist to properly serve the patients of the dentist.

(7) directing or influencing the selection of specific diagnostic examinations and treatment or practices regarding patients without due regard to the recommended diagnostic examinations and treatment agreed upon by the dentist and the patient, except that a dentist having the responsibility for training or supervising another dentist may reasonably limit treatment or practices as a part of the training or supervision of a dentist based upon the training and competency of a dentist to perform certain treatment or practices.

(8) limiting or determining the duties of professional, clinical or other personnel employed to assist a dentist in the practice of dentistry.

(9) establishing professional standards, protocols or practice guidelines which in the professional judgment of the dentist providing dental service to the dentist's patient, conflict with generally accepted standards within the dental profession.

(10) entering into a dental practice management agreement providing for a fee determined by a percentage of the revenue earned by a dentist from the dentist's practice.

(11) placing limitations or conditions upon communications that are clinical in nature with the dentist's patients.

(12) precluding or restricting a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

(13) scheduling patients of the dentist in a manner that may have the effect of discouraging new patients from coming into the dentist's practice, or postponing future appointments or that give scheduling preference to an individual, class or group.

(14) penalizing a dentist for reporting violations of a law regulating the practice of dentistry.

(15) conditioning the payment of fees to a dentist or the amount of management fees a dentist must pay, on the referral of patients to other health care providers specified by a non-dentist, or collecting a management fee that is not reasonably related to the fair market value of services provided.

(c) The entry into one or more of the following agreements by a dentist shall not be presumed to have violated the Texas Dental Practice Act, Article 4551a, Section (8):

(1) leases, mortgages, ownership agreements or other arrangements regarding use of space for dental offices, based on a set, non percentage fee reasonably related to the fair market value of the office space provided at the time the lease or other arrangement is entered into.

(2) agreements regarding the purchase, sale, financing or lease of dental equipment, instruments and supplies so long as the dentist maintains the complete care, custody, and control of the dental instruments and supplies and the lease does not provide for a payment or fee based upon a percentage of the revenue received by the dentist, or the dental practice.

(3) agreements providing for accounting, bookkeeping, investment or similar financial services.

(4) the financing, lease, use or ownership of non-dentist business equipment such as telephones, computers, software, and general office equipment at reasonable, market related fees.

(5) services regarding the pledge, collection or sale of accounts receivable from patients.

(6) agreements regarding billing and collection services.

(7) advertising and marketing services so long as the dentist remains solely responsible for the content of any advertising or marketing services and for ensuring that such conform to all applicable legal requirements.

(8) agreements regarding consulting, professional development, business practices and other advisory agreements which do not limit the dentist's ability to use the dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition.

(9) employment agreements which specify that the dentist shall continue to have the right to use the dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition, provided that in practice the dentist is allowed to use the dentist's professional judgment.

(d) The provisions of subsection (c) of this section herein may be rebutted and the entry into these agreements or other undertakings may be found to be in violation of the Dental Practice Act if it can be shown that the agreements or other undertakings result in the control, attempt to control, influence, attempt to influence or otherwise interfere with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition.

(e) This rule shall not be applicable to dentists or others covered by Article 4551b, entitled Exceptions, Article 4551m, regarding administration of an estate and continuation of practice nor Article 4551n regarding employment of dentists.

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903431
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 463-6400

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Part XII. Board of Vocational Nurse Examiners

Chapter 237. Continuing Education

Subchapter A. Definitions

22 TAC §237.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Board of Vocational Nurse Examiners or in the Texas Register

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Board of Vocational Nurse Examiners proposes to repeal §237.1 relating to Definitions. On March 9, 1999, the Board reviewed Chapter 237 relating to Continuing Education as outlined the Board's Review Plan and determined that §237.1 be repealed so the Board may adopt a new §237.1 for clarification and to establish a numbering system for all definitions.

Mary M. Strange, Executive Director, has determined that for the first five year period the repeal of this rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for the first five years the repeal of this rule is in effect the public benefits anticipated as a result of enforcing the rule will be consistent definitions. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The repeal is proposed under Texas Civil Statutes, Article 4528c, Section 4(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§237.1. Definitions.

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

Filed with the Office of the Secretary of State on June 11, 1999.

TRD-9903448
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-8100

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The Board of Vocational Nurse Examiners proposes new §237.1 relating to Definitions. On March 9, 1999, the Board reviewed Chapter 237 relating to Continuing Education as outlined the Board's Review Plan and determined that new §237.1 be proposed for clarification and to establish a numbering system for all definitions.

Mary M. Strange, Executive Director, has determined that for the first five year period this rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for the first five years this rule is in effect the public benefits anticipated as a result of enforcing the rule will be consistent definitions. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The new rule is proposed under Texas Civil Statutes, Article 4528c, Section 4(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§237.1. Definitions.

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

(1) Academic Course - a specific set of learning experiences offered in an accredited school, college, or university. Academic credit will convert on the following basis: one academic quarter hour = 10 contact hours; one academic semester hour = 15 contact hours.

(2) Accredited - recognized as having met certain predetermined standards or qualifications. The accreditation applies to an agency or organization which is recognized by the Board to approve programs and providers.

(3) Approved - recognized as having met established standards and predetermined criteria of the Board.

(4) Approver - agency or organization recognized by the Board to approve programs and/or providers. May be referred to as credentialing agency.

(5) Audit - verification of a licensee's (or provider's) satisfactory completion of the Board's criteria related to continuing education during a specified time period.

(6) Auditing Academic Courses - attending courses in nursing or health care in a university or college program without receiving formal credit.

(7) Authorship - Development of an original manuscript for a journal article or text accepted by a publisher for statewide or national distribution on a subject related to nursing or health care.

(8) Board - Board of Vocational Nurse Examiners

(9) C.E.U. - continuing education unit. Unit of measure used to designate 10 contact hours. One CEU = 10 contact hours.

(10) Classroom Instruction - workshops, seminars, institutes, conferences or short-term courses which the individual attends and are approved for continuing education credit.

(11) Contact Hour - 50 consecutive minutes of participation in an approved learning activity.

(12) Continuing Education - programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills and develop attitudes for the enhancement of nursing practice, thus improving health care to the public.

(13) Delinquent License - one which has not been renewed by the Board due to failure to meet licensure requirements. Also referred to as a lapsed license.

(14) Endorsement - Process by which a licensee from another state whose requirements are equal to those of Texas, and whose individual qualifications are equivalent to those required by law is granted a license to practice as a licensed vocational nurse in this state without examination after paying the required fee and meeting all other requirements.

(15) External Nursing Degree Courses - courses leading to a degree in nursing that are granted by an accredited institution via

distance learning. The institution is not required to be located in Texas but is required to meet the Texas Higher Education Coordinating Board's rules for degree granting in Texas and recognized by a state board of nursing.

(16) Inactive License - license which provides legal authority to use the title vocational nurse, but which prohibits the nurse from being gainfully employed.

(17) Individualized Instruction - a program initiated by the individual and completed at the individual's pace. Activities which may be approved for credit include home study and programmed instruction.

(18) Inservice - programs sponsored by the employing agency to provide information about the work-setting, such as philosophy, policies and procedures, on-the-job training, orientation, and equipment demonstration. These do not meet criteria for continuing education credit.

(19) Institutional-based Instruction - planned programs conducted by the employing agency for the development of its nursing staff's knowledge and improvement of skills. Institutional-based instruction which meets the Board's criteria may be approved for C. E. credit. This shall not be inservice programs.

(20) Nursing Practice - performance of services for compensation appropriate for licensed vocational nurses employed in clinical settings, administration, education, or research

(21) Orientation - a program designed to introduce employees to the philosophy, goals, policies, procedures, role expectations and physical facilities of a specific work place. This does not meet the continuing education criteria as intended by these rules.

(22) Program - An organized educational activity designed and evaluated to meet a set of behavioral objectives. May be presented in one session or a series of sessions.

(23) Program Development - The development and presentation of a program which is not part of the licensee's primary employment responsibilities may be considered for continuing education credit for the program presenter.

(24) Provider - Individual, partnership, organization, agency or institution which offers continuing education programs.

(25) Provider Number - Unique number assigned to the provider upon approval by a credentialing agency.

(26) Reactivation - Process of making a license current, which has been held in abeyance per licensee's request for placement on the inactive list. This process does not involve Board action at any juncture.

(27) Refresher Course - Program designed to update knowledge of current nursing theory and clinical practice. Consists of a didactic and clinical component to ensure entry level competencies into vocational nursing practice. Refresher courses are not acceptable for continuing education credit.

(28) Reinstatement - the individual with a revoked or suspended license must demonstrate or supply evidence to the Board of their rehabilitation or current fitness to hold a license. Reinstatement petitions shall be considered no sooner than five years following a revocation order, one year following a voluntary surrender revocation order, or in the case of a suspension order, upon conclusion of the specified period of suspension.

(29) Renewal Period - two year period determined by the licensee's birth month and year. It begins on the first day of the month following the birth month and ends on the last day of the birth month in odd or even-numbered years. Also called biennium.

(30) Self-directed Study - an educational activity where the learner takes the initiative and the responsibility for assessing, planning, implementing and evaluating the activity.

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

Filed with the Office of the Secretary of State on June 11, 1999.

TRD-9903449
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-8100

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Subchapter B. Continuing Education

22 TAC §237.16

The Board of Vocational Nurse Examiners proposes amendment of §237.16 relating to Additional Criteria for Specific Continuing Education Programs. On March 9, 1999, the Board reviewed Chapter 237 relating to Continuing Education as outlined the Board's Review Plan and determined that §237.16 should be amended to clarify awarding of contact hours for written proficiency examinations.

Mary M. Strange, Executive Director, has determined that for the first five year period the amendment of this rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for the first five years the amendment of this rule is in effect the public benefits anticipated as a result of enforcing the rule will be clarification of contact hours. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4528c, Section 4(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§237.16. Additional Criteria for Specific continuing Education Programs.

In addition to criteria outlined in §237.15 of this title (relating to Criteria for Acceptable Continuing Education Activity), the following guidelines shall apply to the selection and/or planning and implementation of specific continuing education programs.

(1) Academic Course

(A) The course shall be within the framework of a curriculum that leads to an academic degree in nursing or any academic course relevant to nursing practice/health care. [~~External nursing degree courses are acceptable as academic courses.~~]

(B) External nursing degree courses are acceptable as academic courses. The individual must be enrolled in an educational institution to be awarded full academic credit. Five contact hours will be awarded for courses taken by passing of written proficiency examinations that will be credited toward a nursing degree. [~~Participants, upon audit by the Board shall be able to present an official transcript indicating completion of the course with a passing grade.~~]

(C) Participants, upon audit by the Board shall be able to present an official transcript indicating completion of the course with a passing grade.

(2)-(4) (No change.)

(5) Certification

(A) (No change.)

[~~(B) credit is awarded for initial certification only;~~]

(B) [~~C~~] A maximum credit of one contact hour per renewal period may be obtained for certification in basic cardiopulmonary resuscitation.

(6)-(7) (No change.)

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

Filed with the Office of the Secretary of State on June 11, 1999.

TRD-9903451
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-8100

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Chapter 239. Contested Case Procedure

Subchapter A. Definitions

22 TAC §239.1

The Board of Vocational Nurse Examiners proposes to amend §239.1 relating to Definitions. The rule is amended to include a definition for Professional Boundary.

Mary M. Strange, Executive Director, has determined that for the first five years the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be protection of the public. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments on the proposed amendment may be submitted to Mary M. Strange, R.N., BSN, CNA, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701 (512) 305-8100.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§239.1. Definitions.

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

(1)-(17) (No change.)

(18) Professional Boundary - the spaces between the nurses power and the patient's vulnerability. The power of the nurse comes from the professional position and the access to private knowledge about the patient. Establishing boundaries allows the nurse to control this power differential and allows a safe connection to meet the patient's need.

(19) [~~(18)~~] Reinstatement - the individual with a revoked or suspended license must demonstrate or supply evidence to the Board of their rehabilitation or current fitness to hold a license. Reinstatement petitions shall be considered no sooner than five years following a revocation order, one year following a voluntary surrender revocation order, or in the case of a suspension order, upon conclusion of the specified period of suspension.

(20) [~~(19)~~] Reprimand - a public and formal censure against a license.

(21) [~~(20)~~] Respondent - a person who has been made the subject of a formal or informal complaint alleging violation of the Vocational Nurse Act or rules, regulations, or Orders of the Board of Vocational Nurse Examiners.

(22) [~~(21)~~] Revocation - the withdrawal or repeal of a license. Revocation is established for a minimum period of five years.

(23) [~~(22)~~] Staff - the investigative staff of the Board of Vocational Nurse Examiners.

(24) [~~(23)~~] Suspension - the temporary withdrawal of a license. The Board may suspend for one day or a designated number of years or until a specified event occurs.

(25) [~~(24)~~] Universal Precautions - procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments.

(26) [~~(25)~~] Voluntary Surrender - the unprescribed relinquishment of a license, which results in revocation of a license without formal charges, notice, or a hearing. The licensee must execute a sworn statement to the Board that he or she no longer desires to be licensed. Voluntary surrender revocation is established for a minimum period of one year from the date of the endorsement of the Board Order.

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

Filed with the Office of the Secretary of State, on June 11, 1999.

TRD-9903452
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–8100

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Subchapter B. Enforcement

22 TAC §239.11

The Board of Vocational Nurse Examiners proposes to amend §239.11 relating to Unprofessional Conduct. The rule is amended specifically address professional boundary violations. The amendment will enhance the effectiveness of the Board in disciplining LVNs who endanger the appropriate professional relationship.

Mary M. Strange, Executive Director, has determined that for the first five years the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be protection of the public. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments on the proposed amendment may be submitted to Mary M. Strange, R.N., BSN, CNA, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701 (512) 305-8100.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§239.11. Unprofessional Conduct.

Unprofessional or dishonorable conduct, likely to deceive, defraud or injure the public, may include the following described acts or omissions:

(1)-(26) (No change.)

(27) failing to conform to the minimal standards of acceptable prevailing practice, regardless of whether or not actual injury to any person was sustained, including but not limited to:

(A)-(K) (No change.)

(L) failing to recognize and honor the professional interpersonal boundaries appropriate to any therapeutic relationship or health care setting.

(28)-(29) (No change.)

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

Filed with the Office of the Secretary of State, on June 11, 1999.

TRD-9903453

Mary M. Strange, RN, BSN, CNA

Executive Director

Board of Vocational Nurse Examiners

Earliest possible date of adoption: July 25, 1999

For further information, please call: (512) 305–8100

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Chapter 240. Peer Review and Reporting

22 TAC §240.11, §240.12

The Board of Vocational Nurse Examiners proposes to amend §240.11 relating to Minor Incidents and §240.12 relating to Mandatory Reporting.. On March 9, 1999, the Board reviewed Chapter 240 relating to Peer Review and Reporting as outlined in the Board's Review Plan and determined that §240.11 and §240.12 be amended for clarification.

Mary M. Strange, Executive Director, has determined that for the first five year period the amendment of these rules is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rules.

Mrs. Strange has also determined that for the first five years the amendment of these rules is in effect the public benefits anticipated as a result of enforcing the rules will be clarification of the process. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment if these rules is proposed under Texas Civil Statutes, Article 4528c, §4(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§240.11. Minor Incidents.

(a)-(e) (No change.)

(f) Nothing in this rule is intended to prevent reporting alleged violations as described in §240.12 of this title (relating to Mandatory Reporting.) [~~Nothing in this rule is intended to prevent reporting of a potential violation directly to the Board.~~]

§240.12. Mandatory Reporting.

(a) A licensed vocational nurse who has observed a violation of the Vocational or RN Nurse Act/Rules which exposed a patient or other person unnecessarily to a serious risk or harm resulting in further medical intervention and/or death shall report said violation to the appropriate supervisory individual and/or submit a written complaint to the appropriate board. The person in authority shall initiate an investigation and report the violation to the peer review committee as deemed appropriate. In facilities where there is no peer review committee, the individual in authority will report the violation the board office in a signed written document that includes the name of the nurse committing the alleged violation and any other pertinent information. [~~Each vocational nurse having reasonable cause to suspect that another vocational nurse has exposed a patient or other person unnecessarily to a serious risk of harm, resulting in further medical intervention and/or death, because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment, shall report to the Board in a signed written document, the name of the vocational nurse committing the suspected violation and any other pertinent information within the vocational nurse's knowledge. A vocational nurse without personal knowledge of the suspected violation is not required to report under this Chapter if he or she has reasonable cause to believe the vocational nurse has already been reported.~~]

(b) Each employer of a vocational nurse who is believed to have exposed a patient or other person unnecessarily to serious risk of harm, resulting in further medical intervention and/or death, because of unprofessional conduct, failure to adequately care for a

patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment, shall report to the Board in a signed, written document, the name of the vocational nurse committing the alleged [~~suspected~~] violation and any other pertinent information within the vocational nurse employer's knowledge.

(c) Each vocational nurse employer that regularly employs, hires or otherwise contracts for the services of ten or more vocational nurses shall develop a written plan for identifying and reporting vocational nurses in its service who expose patients or other persons unnecessarily to a serious risk of harm resulting in further medical intervention and/or death, because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment. The plan must include an appropriate process for the review of any incident reportable under this Chapter by a vocational nursing peer review committee established and operated under Rule 240.13 [~~241.11~~] and for the affected vocational nurse to submit rebuttal information to that committee. [~~Said written plan required by this Chapter shall be in operation by September 1, 1995.~~]

(d) (No change.)

(e) Each national or state association of vocational nurses that conducts a certification or accreditation program for vocational nurses that expels, decertifies, or takes any other substantive disciplinary action, as defined by the Board, against a vocational nurse as a result of the vocational nurse's failure to conform to the minimum standards of acceptable vocational nursing practice, shall report to the Board in writing the name of the vocational nurse committing the alleged [~~suspected~~] violation and any other pertinent information within the association's knowledge.

(f)-(w) (No change.)

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

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Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–8100

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Part XXII. Texas State Board of Public Accountancy

Chapter 507. Employees of the Board

22 TAC §507.6

The Texas State Board of Public Accountancy (Board) proposes new §507.6 concerning Employee Training and Education Assistance Program.

The proposed new §507.6 will allow the Board to have an Employee Training and Education Assistance Program pursuant to Section 656 of the Government Code.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the new rule will be zero to local government because this rule affects only the Board. The additional estimated cost to the state will be less than $1,000 per year.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero because the new rule is not intended to reduce costs.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the new rule will be zero because the new rule is not intended to affect revenue.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed rule would be that some Board employees may be able to receive training or education assistance if it is work related. The probable economic cost to persons required to comply with the new rule will be zero because the new rule requires no one to do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule affects only the Board and its employees. The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

The new rule is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and the Public Employees Training Act Section 656 of the Government Code, which requires state agencies to adopt rules to permit reimbursement of Educational Expenses.

No other statute, code or article is affected by this proposed new rule.

§507.6. Employee Training and Education Assistance Program.

(a) Pursuant to the State Employees Training Act, Section 656 of the Government Code, it is the policy and practice of the Board to encourage employee's professional development through training and education programs.

(b) The Board may provide assistance for education and training for an employee if the Executive Director determines that the education or training will enhance the employee's ability to perform current or prospective job duties and will benefit both the Board and the employee.

(c) Financial assistance may be awarded for some or all of the following expenses:

(1) tuition, including correspondence courses that fulfill degree, professional or General Equivalence Diploma program (GED) plan requirements;

(2) Degree Plan pertinent College Level Equivalency Program examinations if the employee receives college credit or waiver of course requirements;

(3) Degree Plan pertinent Life Experience Assessments if the employee receives college credit; and

(4) required fees, including lab fees, and books.

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903400
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–7848

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22 TAC §507.7

The Texas State Board of Public Accountancy (Board) proposes new §507.7 concerning Eligibility.

The proposed new §507.7 will allow the board to have eligibility rules for its Employee Training and Education Assistance Program.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the new rule will be zero because this rule addresses only eligibility of board employees.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero because this rule addresses only eligibility of board employees.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the new rule will be zero because this rule addresses only eligibility of board employees.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed rule would be that some board employees may be able to receive training or education assistance if it is work related. The probable economic cost to persons required to comply with the new rule will be zero because this rule addresses only eligibility of board employees.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because this rule addresses only eligibility of board employees. The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

The new rule is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and the Public Employees Training Act Section 656 of the Government Code, which requires state agencies to adopt rules to permit reimbursement of Educational Expenses.

No other statute, code or article is affected by this proposed new rule.

§507.7. Eligibility.

(a) To be eligible for consideration for training and education assistance, an employee must;

(1) be in good standing with the Board;

(2) meet and continue to meet all performance expectations;

(3) have at least 12 months of service with the Board; and

(4) seek enrollment and participation in a field of study that relates to assigned or prospective job duties, a professional development requirement, a GED program or a higher education degree plan.

(b) To maintain eligibility in a degree program an employee must be enrolled in an institution of higher education in a course of instruction leading toward a degree and maintain a passing grade point average.

(c) To maintain eligibility in a GED program an employee must be enrolled each semester in a GED program and maintain a passing grade point average.

(d) The employee must attend and satisfactorily complete the education and training, including passing tests or other types of performance measure where required.

(e) Each semester an employee must provide grade reports to verify that full credit was received for courses taken.

(f) Employees must provide fee receipts for courses to be taken and must promptly report outside funds such as grants, scholarships of other financial aid received. The Executive Director may adjust the assistance provided to the employee at any time for any reason.

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903401
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–7848

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22 TAC §507.8

The Texas State Board of Public Accountancy (Board) proposes new §507.8 concerning Procedures.

The proposed new §507.8 will allow the board to have procedural rules for its Employee Training and Education Assistance Program ("Program").

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the new rule will be zeros because this rule addresses only procedural rules for the Program.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zeros because this rule addresses only procedural rules for the Program.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the new rule will be zeros because this rule addresses only procedural rules for the Program.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed rule would be that some board employees may be able to receive training or education assistance if it is work related. The probable economic cost to persons required to comply with the new rule will be zero because the new rule requires no one to do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule affects only the board and its employees. The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

The new rule is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed new rule.

§507.8. Procedures.

(a) The Executive Director may require a written agreement between the Board and the employee describing the terms and conditions of the education or training assistance to be provided by the Board. The Board may impose such terms and conditions as may be reasonable and appropriate including but not limited to specifying the circumstances under which the assistance may be terminated and the employee may be required to repay the amount of assistance.

(b) The Executive Director will reconsider each employee's participation in the Education Assistance Program each semester.

(c) Reason. Assistance may be terminated and the employee may be required to repay all funds received from the institution:

(1) withdraws from the institution;

(2) is removed or prohibited from attending the institution;

(3) fails to comply with one or more terms of the assistance agreement including but not limited to additional terms concerning termination and repayment of assistance; or

(4) is terminated by the Board during the duration of the assistance agreement.

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903402
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–7848

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Chapter 523. Continuing Professional Education

Subchapter A. Continuing Professional Education (CPE) Programs

22 TAC §523.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.1, concerning Continuing Professional Education Purpose and Definition. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.1 will restate the purpose of Continuing Professional Education ("CPE"), define a "formal group program", restate the definition of "self-study program", make some editorial changes and re-word the sponsor's responsibility to comply with the board's CPE program.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendments do not require the board or anyone to do anything differently.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendments do not require the board or anyone to do anything differently.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendments do not require the board or anyone to do anything differently.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule on CPE.

The probable economic cost to persons required to comply with the rule will be zero because the amendments do not require the board or anyone to do anything differently.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendments do not require the board or anyone to do anything differently. The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.1. ~~[Formal]~~ Continuing Professional Education Purpose and Definition.

(a) The purpose of continuing professional education is to [~~To~~] help insure that practitioners receive quality continuing education. [~~appropriate standards are needed.~~] With appropriate standards, programs are less likely to vary in quality of development, presentation, and measurement in reporting of credits. [~~Moreover, the large number of programs available throughout the United States, the varying backgrounds of credentials of sponsoring organizations, and the mobility of participants in these programs, create measuring and reporting problems that suggest the need for nationally uniform standards. If a group program complies with the standards in this statement, it becomes a formal group program.~~]

(b) The following terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *"Formal group program"* means a program that complies with the standards in this chapter.

(2) [~~(b)~~] *"Self-study program"* [~~A self-study program~~] (correspondence) means [~~is~~] an educational process designed to permit a participant to learn a given subject without major interaction with an instructor. For a self-study program to be formal:

(A) [~~(1)~~] the sponsor must provide a certificate based upon evidence of satisfactory completion, such as a completed workbook or examination; and

(B) [~~(2)~~] it must comply with the standards in this chapter [~~statement~~].

(3) [~~(c)~~] "Computer-based interactive format" shall mean a program designed to simulate a classroom learning process by employing structured software or technology-based systems that provide significant ongoing interactive feedback between the participant and the software regarding the learning process. These programs clearly define lesson objectives and manage the participant through the learning process by:

(A) [~~(1)~~] requiring frequent response to questions that test for understanding of the material presented;

(B) [~~(2)~~] providing evaluative feedback to incorrectly answered questions; and

(C) [~~(3)~~] providing reinforcement feedback to correctly answered questions.

(D) [~~(d)~~] Sponsors are the organizations responsible for presenting programs and ensuring [~~are not necessarily program developers; however, it is the sponsor's responsibility to see~~] that their programs comply with all the standards in this chapter [~~statement~~].

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903412
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–7848

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22 TAC §523.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.2, concerning Standards for Continuing Professional Education Program Development. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.2 will re-state the rule caption and clear up some language in the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the changes are cosmetic.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the changes are cosmetic.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the changes are cosmetic.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the rule will be zero because the changes are cosmetic.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the changes are cosmetic. The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.2. Standards for Continuing Professional Education Program [~~CPE Program~~] Development.

(a) The fundamental purpose of continuing professional education is to increase the licensee's professional competence. A professional person is one characterized as conforming to the technical and ethical standards of the [~~his or her~~] profession. This characterization reflects the expectation that a person holding out to perform services of a professional quality needs to be knowledgeable within a broad range of related skills. This concept of professional competence needs to be broadly interpreted.

(b) Courses which are considered by the board as increasing the licensee's professional competence include:

(1) technical courses in areas such as accounting, audit, tax, management advisory services, and other technical areas of benefit to a licensee and a licensee's employer(s); and

(2) non-technical courses such as communications, advanced courses in foreign languages relating to accounting, ethics, behavioral science, and practice management which are of benefit to a licensee or a licensee's employer(s). Refer to §523.30 of this title (relating to Limitation for Non-technical Courses).

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903413
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–7848

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22 TAC §523.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.6, concerning Program Content. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.6 will remove a requirement that new accounting standards must be incorporated into the instructional material.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule on program content that states what the board wants.

The probable economic cost to persons required to comply with the rule will be zero because the amendment requires nothing of anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment requires nothing of anyone. The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.6. Program Content.

The program developer must review the course materials periodically to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued where appropriate and obsolete materials should be deleted. However, between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes. [~~If, for example, a new accounting standard is issued, a program will not be considered current unless the ramifications of the new standard have been incorporated into the materials or the instructor appropriately informs the participants of the new standard.~~]

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

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TRD-9903414

William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305–7848

Subchapter B. Continuing Professional Education Standards

22 TAC §523.24

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.24 concerning Learning Environment. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.24 will eliminate the reference to seating arrangements.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment does not require anything of anyone.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment does not require anything of anyone.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment does not require anything of anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a crisper rule on learning environment.

The probable economic cost to persons required to comply with the rule will be zero because the amendment does not require anything of anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment does not require anything of anyone.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business

compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.24. Learning Environment.

The number of participants and physical facilities should be consistent with the teaching method(s) [~~method~~ ~~(methods)~~] specified. The learning environment is affected by the number of participants and by the quality of the physical facilities. Sponsors have an obligation to pay serious attention to these two factors. The maximum number of participants for a case-oriented discussion program~~, for example,~~] should be considerably less than for a lecture program. [~~The seating arrangement is also very important. For a discussion presentation, learning is enhanced if seating is arranged so that participants can easily see and converse with each other. If small group sessions are an integral part of the program format, appropriate facilities should be available to encourage communications within a small group. In effect,~~] Class [~~class~~] size, quality of facilities, and seating arrangements are integral and important aspects of the educational environment and should be carefully controlled.

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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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §523.25

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.25 concerning Evaluation. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.25 will make the evaluation mandatory rather than optional.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment requires no additional services from the state.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment requires no additional services from anyone in state or local government.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment requires no additional services from the state.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that CPE courses will have mandatory evaluations which should improve the CPE courses, to the benefit of consumers and CPAs.

The probable economic cost to persons required to comply with the rule will be about $5.00 per year based on typing and copying a one page course evaluation for those who are not already utilizing written course evaluations.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment will only cost about $5.00 per year based on typing and copying a one page course evaluation for those who are not already utilizing written course evaluations.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.25. Evaluation.

(a) All programs should include some means for evaluating quality by both participants and instructors to determine whether:

(1) objectives have been met;

(2) prerequisites were necessary or desirable;

(3) facilities were satisfactory;

(4) the instructor was effective;

(5) advance preparation materials, if any, were satisfactory; and

(6) the program content was timely and effective.

(b) Evaluations should [~~might~~] take the form of:

(1) pretests for advance preparation; and/or

(2) post-tests for effectiveness of the program; and/or

(3) other evaluation forms or questionnaires completed at the end of the program or later.

(c) Instructors should be informed of their performance, and sponsors should perform a systematic [~~systematically~~] review of the evaluation process to ensure its effectiveness.

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

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TRD-9903416
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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22 TAC §523.26

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.26 concerning Program Measurement. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.26 will remove three unnecessary sentences from the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendments do not require anything of anyone.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendments do not require anything of anyone.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendments do not require anything of anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more precise program measurement rule.

The probable economic cost to persons required to comply with the rule will be zero because the amendments do not require anything of anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendments do not require anything of anyone.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.26. Program Measurement.

(a) All programs should be measured in terms of 50-minute contact hours. The shortest recognized program should consist of one contact hour. [~~The purpose of this standard is to develop uniformity in the measurement of continuing education activity.~~] A contact hour is 50 minutes of continuous participation in a group program. Under this standard, a credit hour is granted only for each contact hour. [~~For example, a group program lasting 100 minutes would count for two hours; however, one lasting between 50 and 100 minutes would count only one hour.~~]

(b) For continuous conferences and conventions, when individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three contact hours.

(c) For university or college courses, each semester hour credit should equal 15 hours toward the requirement. A quarter hour credit should equal 10 hours.

(d) Self-study programs should be pretested to determine average completion time. One half of the average completion time is the recommended credit to be allowed. [~~For example, a self-study program that takes an average of 800 minutes to complete is recommended for eight contact hours of credit.~~]

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903417
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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22 TAC §523.27

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.27 concerning Credits for Instructors and Discussion Leaders. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.27 will remove an unnecessary sentence from the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a crisper rule.

The probable economic cost to persons required to comply with the rule will be zero because the amendment requires nothing of anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because zero because the amendment requires nothing of anyone.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.27. Credits for Instructors and Discussion Leaders.

When an instructor or discussion leader serves at a program for which participants receive credit and at a level that contributes to the instructor's or discussion leader's professional competence, credit may be given for preparation and presentation time measured in terms of credit hours. [~~Instructors and discussion leaders could receive credit for both preparation and presentation but not as a participant.~~] For the first time they present a program, they may receive credit for actual preparation hours up to two times the recommended credit hours. For repetitious presentations, the instructor may receive credit only if it can be demonstrated that the subject matter involved was changed sufficiently to require significant additional study or research. The maximum credit for preparation and presentation cannot exceed 20 hours in the reporting period.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903418
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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22 TAC §523.28

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.28 concerning Credits for Published Articles and Books. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.28 will remove the 20 credit hour limitation for publications, which allows the Continuing Professional Education (CPE) committee to exercise its discretion.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment does not require anything of anyone.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment does not require anything of anyone.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment does not require anything of anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that there is no limit on the amount of CPE credit hours which are potentially available for publications.

The probable economic cost to persons required to comply with the rule will be zero because the amendment does not require anything of anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendments does not require anything of anyone.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.28. Credits for Published Articles and Books.

Continuing Professional Education [~~(CPE)~~] credit hours may be claimed for published articles and books provided they contribute to the professional competence of the licensee. Credit hours for preparation of such publications may be claimed up to 10 hours in any continuing professional education [~~CPE~~] reporting period. In exceptional circumstances, a licensee may submit a request to the board for additional credit not to exceed a total of 20 credit hours in the reporting period. The request should be accompanied by a copy of the article(s) or book(s) and an explanation justifying the request for additional continuing professional education [~~CPE~~] hours.

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

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TRD-9903419
William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §523.29

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.29 concerning Minimum Hours Required as a Participant. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.29 will require that a maximum number of continuing professional education (CPE) hours be completed in a classroom or self-study environment.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the state is not required to do anything.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because state and local governments are not required to do anything.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the state is not required to do anything.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule has a maximum number of hours from classroom and self-study for participants.

The probable economic cost to persons required to comply with the rule will be zero because no one is required to do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because no one is required to do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.29. Maximum [~~Minimum~~] Hours Allowed [~~Required~~] as a Participant.

A maximum [~~minimum~~] of 20 credit hours per year [~~50%~~] of the requirement provided for in §523.27 and §523.28 of this title (relating to Credits for Instructors and Discussion Leaders and Credits for Published Articles and Books) may [~~must~~] be received from a qualified continuing professional education program in classroom instruction and/or self-study.

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903420
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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22 TAC §523.30

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.30 concerning Limitation for Non Technical Courses. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.30 will limit non-technical courses to a maximum of 20 hours.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment does not require any additional services from anyone.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment does not require any additional services from anyone.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment does not require any additional services from anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that limits the number of non-technical continuing professional education (CPE) hours.

The probable economic cost to persons required to comply with the rule will be zero because the amendment does not require any additional services from anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment does not require any additional services from anyone.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.30. Limitation for Non-Technical [~~Nontechnical~~] Courses.

Continuing professional education (CPE) credit hours may be claimed for non-technical [~~nontechnical~~] courses limited to not more than 20 credit hours in the reporting period [~~50% of the annual requirement~~].

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903421
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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Subchapter C. Continuing Professional Education Reporting

22 TAC §523.41

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.41 concerning Standards for Continuing Professional Education Reporting. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.41 will use more precise language.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule with clearer language.

The probable economic cost to persons required to comply with the rule will be zero because the amendment does not require anyone to do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment does not require anyone to do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.41. Standards for *Continuing Professional Education* *[~~CPE~~] Reporting.*

(a) (No change.)

(b) These standards are designed to encourage participants to document their attendance at group programs or participation in self-study programs. Evidence of completion would normally be the certificate supplied by the sponsor. Documentation by the licensee must be retained for the three current [~~most recent full~~] reporting periods.

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903422
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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Subchapter D. Mandatory Continuing Professional Education (CPE) Program

22 TAC §523.61

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.61 concerning Establishment of Mandatory Continuing Professional Education Program. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.61 will remove an unnecessary sentence and add the Ethics course to the list of items for which a licensee is responsible.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the rule will be zero because the amendment does not require anyone to do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment does not require anyone to do anything. The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic

effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.61. Establishment of Mandatory Continuing Professional Education [~~CPE~~] Program.

(a) A mandatory CPE program was established pursuant to the Public Accountancy Act of 1979, Texas Civil Statutes, Article 41a-1, §6(a), which provided the board with authority to adopt a system of required continuing professional education for licensees.]

(b) A licensee shall be responsible for ensuring that continuing professional education [~~CPE~~] credit hours claimed conform to the board's standards as outlined in §§523.21-523.32 [~~523.31~~] of this title (relating to Program Presentation Standards; Instructors; Program Sponsors; Learning Environment; Evaluation; Program Measurement; Credits for Instructors and Discussion Leaders; Credits for Published Articles and Books; Maximum [~~Minimum~~] Hours Required as a Participant; Limitation for Non-Technical [~~Nontechnical~~] Courses; [~~and~~] Alternative Sources of Continuing Professional Education ; and Ethics Course).

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903423
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–7848

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22 TAC §523.62

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.62 concerning Mandatory Continuing Professional Education Reporting. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.62 will change the rule caption and remove unnecessary language from the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the rule will be zero because the amendment does not require anyone to do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment does not require anyone to do anything. The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.62. Mandatory Continuing Professional Education [~~CPE~~] Reporting.

(a) To receive a license, a licensee shall report at a minimum, the mandatory continuing professional education [~~CPE~~] credit hours under §523.32 and §523.63 of this title (relating to *Ethics Course* and Mandatory *Continuing Professional Education* [~~CPE~~] Attendance) those credits which were accrued during the [~~applicable~~] reporting period.

(b) A licensee shall report continuing professional education [~~CPE~~] credit hours accrued during the reporting period on the license renewal form. Appropriate instructions shall accompany the license renewal form.

(c) The board may not grant exemptions from the requirement to report continuing professional education [~~CPE~~] credit hours

accrued. A licensee must report continuing professional education [~~CPE~~] credit hours on the license renewal form, even if the number reported is zero. [~~A blank on the reporting form will be interpreted as a zero.~~]

(d) A licensee who fails to report the minimum mandatory continuing professional education [~~CPE~~] credit hours accrued during the [~~applicable~~] reporting period will be subject to disciplinary action under §523.64 of this title (relating to Disciplinary Actions Relating to Continuing Professional Education [~~CPE~~]).

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903424
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–7848

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22 TAC §523.63

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.63 concerning Mandatory Continuing Professional Education Attendance. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.63 will clear up and clarify some language and change the CPE exemption for CPAs who reside out of state.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment does not require anything of anyone.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment does not require anything of anyone.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment does not require anything of anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be zero because the amendment does not require anything of anyone.

The probable economic cost to persons required to comply with the rule will be a clearer rule.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment does not require anything of anyone. The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.63. Mandatory Continuing Professional Education [~~CPE~~] Attendance.

A licensee shall complete at least 120 hours of continuing professional education every three years. The individual shall complete at least 20 hours of continuing professional education each year.

(1) An initial licensee, one who is paying the license fee during the first 12-month period, shall be exempt from the requirement for the period during which the applicant is first licensed.

(2) A former licensee whose certificate or registration has [~~shall have~~] been revoked for failure to pay the license fee and who makes application for reinstatement must [~~shall~~] pay the required fees and penalties and must [~~shall~~] accrue the [~~minimum~~] continuing professional education [~~(CPE)~~] credit hours missed.

(3) The board may [~~will~~] consider granting an exemption from the continuing professional education requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested. A licensee who has been granted this exemption and who re-enters the workforce shall be required to accrue continuing professional education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing professional education hours shall be accrued from the technical area [~~only~~] as described in §523.2 and §523.32 of this title (relating to Standards for *Continuing Professional Education* [~~CPE~~] Program Development *and Ethics Course*);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor ; [~~,~~]

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance,

planning, or advice; management advisory services; data processing; treasury, finance, or audit; or

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and subclauses (I)-(III) of this clause, the questions shall be resolved in favor of inclusion of the work as "association with accounting work."

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue continuing professional education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing professional education hours shall be accrued from the technical area [~~only~~] as described in §523.2 *and §523.32* of this title (relating to Standards for Continuing Professional Education [~~CPE~~] Program Development *and Ethics Course*);

(C) a licensee not residing in Texas [~~who~~] submits a sworn statement to the board that the licensee does not serve Texas clients from out of state. [~~the continuing professional education requirements for a resident of the resident jurisdiction have been met;~~]

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the continuing professional education [~~CPE~~] requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on extended active military duty during the period for which the exemption is requested and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance that is acceptable to the board.

(4) A licensee who has been granted the retired or disabled status under §515.8 of this title (relating to Retirement Status or Permanent Disability) is not required to accrue continuing professional education.

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903425
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–7848

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22 TAC §523.64

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.64 concerning Disciplinary Actions Relating to Continuing Professional Education. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.64 will add the Ethics course as a part of the mandatory compliance, and clarify some language.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone to do anything.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone to do anything.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone to do anything.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the Ethics course is added as a part of the mandatory compliance.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require anyone to do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule does not require anyone to do anything. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.64. Disciplinary Actions Relating to Continuing Professional Education [~~CPE~~].

(a) A licensee who fails to comply with the provisions of *§523.32 of this title (relating to Ethics Course),* §523.62 of this title (relating to Mandatory *Continuing Professional Education* [~~CPE~~] Reporting) or §523.63 of this title (relating to Mandatory *Continuing Professional Education* [~~CPE~~] Attendance) may be subject to disciplinary action under the Public Accountancy Act, §§901.501-901.558, Occupations Code [~~of 1991, §21 (Texas Civil Statutes, Article 41a-1)~~], for violation of the Rules of Professional Conduct; §501.25 of this title (relating to Mandatory Continuing Professional Education), which requires compliance with *§523.32 of this title (relating to Ethics Course),* §523.62 of this title (relating to Mandatory Continuing Professional Education Reporting) and §523.63 of this title (relating to Mandatory Continuing Professional Education Attendance).

(b) A licensee shall retain documents or other evidence supporting continuing professional education [~~CPE~~] credit hours claimed for the three current [~~most recent full~~] reporting periods to the date the credit hours are reported to the board, but shall submit the supporting evidence to the board [~~only~~] if such data is specifically requested.

(c) The board may, as deemed appropriate, audit continuing professional education [~~CPE data~~] supplied by a licensee and request that all documentation [~~evidence supporting CPE credit hours claimed~~] be provided to the board within a reasonable period of time [~~as prescribed by the board~~].

(d) Evidence of falsification, fraud, or deceit in the continuing professional education [~~CPE information or~~] documentation [~~supplied~~] may necessitate disciplinary action as authorized in the Public Accountancy Act [~~of 1991, §21 (Texas Civil Statutes, Article 41a-1)~~].

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903426
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305–7848

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Subchapter E. Registered Continuing Education Sponsors

22 TAC §523.71

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.71 concerning Application as a Sponsor. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.71 will delete "initially".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment does not require anyone to do anything.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the rule will be zero because the amendment does not require anyone to do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment does not require anyone to do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.71. Application as a Sponsor.

(a) Each organization desiring to [~~initially~~] register as a provider of continuing professional education shall submit an application on forms provided by the board. This application must be complete in all respects.

(b) The board's staff will review each application for registration and notify the applicant of its acceptance or rejection. Accepted sponsors will be assigned a sponsor number. Rejected applicants will be notified of the reason for rejection.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903427
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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22 TAC §523.73

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.73 concerning Obligations of the Sponsor. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.73 only adds quotation marks to the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is correctly punctuated.

The probable economic cost to persons required to comply with the rule will be zero because the amendment requires nothing of anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment requires nothing of anyone.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.73. Obligations of the Sponsor.
In consideration for registration as a sponsor of continuing professional education, every organization shall agree, in writing, to the following : [:]

(1) "We understand that after acceptance of the application or reapplication by the board we may advise prospective attendees of the program sponsor agreement, our sponsor number, and the number of credit hours recommended. We further agree that if we notify licensees of this agreement we shall do so by use of the following language. ' ["] We have entered into an agreement with the Texas State Board of Public Accountancy to meet the requirements of continuing professional education rules covering maintenance of attendance records, retention of program outlines, qualifications of instructors, program content, physical facilities, and length of class hours. This agreement does not constitute an endorsement by the board as to the quality of the program or its contribution to the professional competence of the licensee.'"

(2) "We understand that our advertising shall not be false or misleading, nor contain words such as ' ["] accredited ' ["] or ' ["]approved' ["] or any terms which may imply that a determination has been made by the board regarding the merits or quality of the program."

(3) "We agree that board members, board staff, or its official designees may inspect our facilities, examine our records, attend our courses or seminars at no charge, and audit our program to determine compliance with the sponsor agreement and the continuing professional education standards of the board."

(4) "We understand and agree that if we fail to comply with this agreement or fail to meet acceptable standards in our programs, our sponsor agreement may be terminated at any time by the board, our sponsor agreement renewal application denied, and notice of such termination or denial may be provided to licensees by the board."

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903428
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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22 TAC §523.74

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.74 concerning National Registry of Continuing Professional Education Sponsors. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The amendment to §523.74 will change "CPE" to "Continuing Professional Education" in the rule caption and in the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment requires nothing of anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read.

The probable economic cost to persons required to comply with the rule will be zero because the amendment requires nothing of anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment requires nothing of anyone.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.74. National Registry of Continuing Professional Education [~~CPE~~] Sponsors.

(a) The board shall accept courses offered by sponsors shown as being in good standing on the National Association of State Boards of Accountancy's National Registry of Continuing Professional Education [~~CPE~~] Sponsors; however, organizations are not required to register with the National Association of State Boards of Accountancy.

(b) Organizations that elect to register with this board shall adhere to the obligations of the sponsor identified in §523.73 of this title (relating to Obligations of the Sponsor), and to the standards promulgated by this board.

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

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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Chapter 527. Quality Review

22 TAC §527.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.2 concerning Purpose. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The proposed amendment to §527.2 will remove unnecessary and dated language from the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendment only clears up the rule's language, does not make substantive changes, and it does not require anyone to perform any additional services.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment only clears up the rule's language, and it does not require anyone to perform any additional services.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the amendment only clears up the rule's language, and it does not require anyone to perform any additional services.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be a rule that has clearer, more accurate language. The probable economic cost

to persons required to comply with the amendment will be zero because the amendment only clears up the rule's language, and it does not require anyone to perform any additional services.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment only clears up the rule's language, and it does not require anyone to perform any additional services. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§527.2. Purpose.

The purpose of the program is to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard-setting bodies. The program shall emphasize education, including appropriate [~~education programs or~~] remedial procedures which may be recommended or required where reporting does not comply with [~~appropriate~~] professional standards. In the event a firm does not [~~practice unit is unwilling or unable to~~] comply with established standards, or a firm's [~~practice unit's~~] professional work is so inadequate [~~egregious~~] as to warrant disciplinary action, the board shall take appropriate action to protect the public interest.

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

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TRD-9903403
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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22 TAC §527.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.4 concerning Quality Review Program. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The proposed amendments to §527.4 will remove some unnecessary and incorrect terms, re-word and combine the substance of two former paragraphs into one paragraph, and remove the 180 day time limit on extensions to perform the quality review.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendments are non-substantive and do not require anyone to perform any additional activities.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendments are non-substantive and do not require anyone to perform any additional activities.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the amendments are non-substantive and do not require anyone to perform any additional activities.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be a rule with clearer, more concise language that has no time limit on extensions. The probable economic cost to persons required to comply with the amendment will be zero because the amendments are non-substantive and do not require anyone to perform any additional activities.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendments are non-substantive and do not require anyone to perform any additional activities. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c)

cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§527.4. Quality Review Program.

The following operations of the program shall be conducted by the board. This section shall not require any firm to become a member of any sponsoring organization.

(1) Applicability. Participation in the program is required of each firm [~~practice unit~~] licensed or registered with the board that [~~who~~] performs accounting and/or auditing engagements, including, but not limited to, audits, reviews, compilations, forecasts, projections, or other special reports.

(2) Operation.

(A) Each firm [~~practice unit~~] registered with the board shall enroll in the program of an approved sponsoring organization in accordance with paragraph (6) of this section within one year from its initial licensing date or the performance of services that require a review. The firm [~~practice unit~~] shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the date within 30 days of its assignment.

(B) It is the responsibility of the firm [~~practice unit~~] to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by[~~within six months after~~] the assigned review due [~~report~~] date.

(3) Minimum standards. The board hereby adopts "Standards for Performing and Reporting on Peer Reviews" promulgated by the American Institute of Certified Public Accountants, Inc., as its minimum standards for review of firm [~~practice unit~~].

(4) Oversight. The board shall appoint a Quality Review Oversight Board (QROB) whose function shall be the oversight and monitoring of sponsoring organizations for compliance and implementation of the minimum standards for performing and reporting on reviews. Oversight procedures to be followed by the QROB shall be provided for by rules promulgated by the board. Information concerning a specific firm or reviewer obtained by the QROB during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. The QROB shall consist of three members, none of whom are current members of the board. The QROB's membership shall consist of:

(A) one non-licensee member who shall have significant experience in the preparation and/or use of financial statements; and

(B) two certificate or registration holders with extensive current experience in accounting and auditing services.

(5) Compensation. Compensation of QROB members shall be set by the board.

(6) Sponsoring organizations. Qualified sponsoring organizations shall be the SEC Practice Section (SECPS); American Institute of Certified Public Accountants (AICPA) Peer Review Program, state CPA societies fully involved in the administration of the AICPA Peer Review Program, National Conference of CPA Practitioners (NCCPAP), and such other entities which [~~register with and~~] are approved by the board [~~on their adherence to the quality review minimum standards~~].

(7) Mergers, combinations, dissolution's, or separations. In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the succeeding firm. Generally, the succeeding firm (the firm with the largest accounting and auditing practice) shall retain their peer review status and the review due date.

[~~(A) Mergers or combinations. In the event that two or more firms are merged or sold and combined, the surviving firm shall retain the quality review and the year of the firm with the largest accounting and auditing practice.~~]

[~~(B) Dissolutions or separations. In the event that a firm is divided, the new practice unit(s) shall retain the review year of the former firm. In the event that such period is less than 12 months, a review year shall be assigned so that the review occurs within 18 months of the commencement of the new firm.~~]

(8) The board will [~~may~~] accept extensions [~~an extension, not to exceed 180 days, as~~] granted by the sponsoring organization to conduct a review, provided the board is notified by the firm [~~practice unit~~] within 20 days of the date that [~~of such~~] an extension is granted.

(9) A firm that has been rejected by a sponsoring organization for whatever reason must make an application to the board and receive authorization to enroll in a program of another sponsoring organization.

(10) A firm choosing to change to another sponsoring organization may do so provided that the firm authorizes the previous sponsoring organization to communicate to the succeeding sponsoring organization any outstanding corrective actions related to the firm's most recent review. Any outstanding actions must be cleared prior to transfer between sponsoring organizations.

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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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §527.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.5 concerning Exemptions. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The proposed amendment to §527.5 will allow for substitution of "firm" for "practice unit" which is the correct term and requires firms to notify the Board that they have become eligible for quality review within 30 days of reaching eligibility.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering

the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that the rule will have correct terms and CPA firms will inform the Board of their eligibility for quality review within 30 days of reaching eligibility. The probable economic cost to persons required to comply with the amendment will be the one-time cost to prepare and mail a letter to the Board stating their eligibility, which the Board estimates to be about $5.00.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the anticipated expense will be a one-time charge of preparing and mailing a letter to the Board, about $5.00. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§527.5. Exemptions.

A firm [~~practice~~ ~~unit~~] which does not perform services as set out in §527.4(1) of this title (relating to Quality Review Program) is exempt from review and shall annually notify the board as to this status. A firm claiming an exemption shall submit a request for the exemption in writing to the board with an explanation of the services offered by the firm. A firm [~~practice~~ ~~unit~~] which begins providing services as set out in §527.4(1) of this title shall notify the Board of the change in status within 30 days and provide the Board withenrollment information within 12 months of the date the services were first provided and have a review within 18 months of the date the services were first provided.

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

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §527.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.6 concerning exemptions. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The proposed amendment to §527.6 clears up some of the language, deletes subsection (c), and replaces "practice unit" with "firm."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendments clear up language, are not substantive and do not require anyone in state or local government to perform any services.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendments clear up language, are not substantive and do not require anyone in state or local government to perform any services.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the amendments clear up language, are not substantive and do not require anyone in state or local government to perform any services.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be a rule with clearer, more precise language. The probable economic cost to persons required to comply with the amendment will be zero because the amendments are not substantive and do not require any additional services to be performed by anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should

be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendments are not substantive and do not require any additional services to be performed by anyone. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§527.6. Reporting to the Board.

(a) A firm [~~practice unit~~] which is a member of the American Institute of Certified Public Accountants (AICPA) Division for CPA Firms and [~~which~~] has had a peer review performed by [~~under the auspices of~~] the SEC Practice Section (SECPS) shall submit to the board a copy of the peer review report (the reviewer's opinion letter), letter of comments (LOC), letter of response (LOR), the conditional letter of acceptance (CLOA) if corrective action is required, and final letter of acceptance (FLOA) [~~(LOA)~~].

(b) For all peer reviews [~~the first quality review~~] covering a peer [~~quality~~] review year, a firm [~~practice unit~~] shall submit to the board:

(1) a copy of the report and the letter of acceptance from the sponsoring organization, if such report is unqualified; or

(2) a copy of the report, LOC, LOR, CLOA, and FLOA [~~LOA~~] if the report is modified [~~qualified~~] in any respect or adverse.

~~[(c) For a practice unit's second and subsequent reviews, including any review carried out on an accelerated basis as part of the corrective action taken as a result of the previous quality review, a practice unit shall submit to the board a copy of that review report LOC, LOR, and LOA.]~~

(c) [~~(d)~~] If corrective action is required by the sponsoring organization after a qualified or adverse review, the firm [~~practice unit~~] shall submit to the board a copy of the final letter of acceptance (FLOA) received from the sponsoring organization. If [~~following corrective action~~] a second adverse opinion [~~review~~] is issued, the firm and the licensees involved may be subject to a hearing under the Public Accountancy Act [~~of 1991~~], Sections 21 and 22.

(d) [~~(e)~~] Any report or document required to be submitted under subsection (b)[~~,~~] or (c)[~~, or (d)~~] of this section shall be filed with the board within ten days of receipt of the notice of acceptance by the sponsoring organization.

(e) [~~(f)~~] Any document submitted to the board under subsection (b)[~~,~~] or(c) [~~, or (d)~~] of this section is confidential pursuant to the Public Accountancy Act [~~of 1991~~], Section 15B(c), and after review by the Quality Review Committee shall either be promptly destroyed by the board's staff, or at the instruction of the committee submitted to the enforcement staff for opening an investigation [~~a complaint~~] file relative to such submission.

(f) [~~(g)~~] The reviewed firm or [~~and~~] sponsoring organization shall complete the Texas State Board of Public Accountancy Quality Review Compliance Reporting Form. The form shall be filed with the state board upon final acceptance of the review by the sponsoring organization. All the information requested on the form shall be provided. The firm shall complete the appropriate[~~Firm Information and Form Certification portion~~] portions of the form. The form and all required letters shall be filed with the board within ten days of receipt of the final letter of acceptance (FLOA).[~~of the review, including the completion of any correction action assigned the firm.~~]

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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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §527.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.7 concerning Retention of Documents Relating to Peer Reviews. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The proposed amendment to §527.7 will replace "practice unit" with "firm" and will rewrite subsection (b) for clarity.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendments will be zero because the amendments do not require anyone in state or local government to perform any additional services.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be a rule with clearer,

more precise language. The probable economic cost to persons required to comply with the amendment will be zero because the amendments are not substantive and do not require any additional services to be performed by anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendments are not substantive and do not require any additional services to be performed by anyone. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a)(Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§527.7. Retention of Documents Relating to Peer [~~Quality~~] Reviews.

(a) Each reviewer shall maintain in the files all documentation necessary to establish that each review conformed to the review standards of the relevant review program, including the review working papers, copies of the review report, any comment letters, and any correspondence indicating the firm's [~~practice~~ ~~unit's~~] concurrence, non-concurrence, and any proposed remedial actions and any related implementation.

(b) The documents described in subsection (a) of this section shall be retained in the reviewer's office for a period of time corresponding to the retention period of the [~~relevant~~] sponsoring organization , and[~~,~~] upon request of the Quality Review Oversight Board, shall be made available[~~to it~~]. In no event shall the retention period be less than 90 days from the date of acceptance of the review by the sponsoring organization.

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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William Treacy
Executive Director
Texas State Board of Public Accountancy

Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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22 TAC §527.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.8 concerning Oversight Procedures to be Followed by the Quality Review Oversight Board. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The proposed amendment to §527.8 will use the correct American Institute of Certified Public Accountants ("AICPA") program's name, replace "quality" review with "peer" review and identify the Public Oversight Board as being an AICPA program.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendments are not substantive and do not require anyone in state or local government to perform any additional services.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendments are not substantive and do not require anyone in state or local government to perform any additional services.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the amendments are not substantive and do not require anyone in state or local government to perform any additional services.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be a rule that is clearer and has the correct names for the AICPA's programs. The probable economic cost to persons required to comply with the amendment will be zero because the amendments are not substantive and do not require anyone to perform any services.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendments are not substantive and do not require anyone to perform any services.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose

of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§527.8. Oversight Procedures to be Followed by the Quality Review Oversight Board.

(a) The purpose of the quality Review Oversight Board (QROB) shall consist of the following:

(1) monitoring sponsoring organizations to provide reasonable assurance that peer [~~quality~~] reviews are being conducted and reported on in accordance with peer [~~quality~~] review minimum standards;

(2) reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer [~~quality~~] review minimum standards; and

(3) (No change.)

(b) The oversight procedures to be performed by the QROB in monitoring of sponsoring organizations shall consist of the following.

(1) Where the sponsoring organization is the AICPA Peer [~~Quality~~] Review Program or other approved sponsoring organizations other than the SEC Practice Section (SECPS), the QROB shall perform the following functions.

(A) (No change.)

(B) During such visits, the QROB shall:

(i) meet with the organization's peer [~~quality~~] review committee during the committee's consideration of peer [~~quality~~] review documents;

(ii) review the organization's procedures for administering the peer [~~quality~~] review program;

(iii) review, on the basis of a random selection, a number of on-site and off-site reviews performed by the organization to include, at a minimum, a review of the report on the peer [~~quality~~] review, the letter of comments (if any), the firm's response to the matters discussed in the letter of comments, the sponsoring organization's letter of acceptance outlining any additional corrective or monitoring procedures, and the working papers on the selected reviews; the purpose of review by the QROB is to determine whether the reviews are being conducted and reported on in accordance with the peer [~~quality~~] review minimum standards; and

(iv) expand the review of peer [~~quality~~] review documents if significant deficiencies, problems, or inconsistencies are encountered during the review of the materials.

(C) (No change.)

(2) Where the sponsoring organization is the SECPS, the QROB shall review the published annual report of the Public Oversight Board of the AICPA and conclude whether the procedures carried out by the Public Oversight Board of the AICPA and the disclosures contained in the annual report are indicative of an acceptable level of oversight. Based on the results of its review, the QROB shall make an annual recommendation to the board as to the continuing qualifications of the SECPS as an approved sponsoring organization.

(c) In the reviewing of policies and procedures of sponsoring organization applicants, the QROB shall perform the following procedures:

(1) review the policies as drafted by the applicant to determine that they will provide reasonable assurance of conforming with the minimum standards for peer [~~quality~~] reviews;

(2) review the procedures as proposed by the applicant to determine that they will insure the following:

(A)-(D) (No change.)

(E) applicant has provided for an independent report acceptance body that meets the standards for peer [~~quality~~] review; the report acceptance body shall consider and accept the results of the review; the report acceptance body should also require corrective actions of firms with significant deficiencies noted in the review process;

(3) (No change.)

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903408
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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22 TAC §527.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.9 concerning Procedures for a Sponsoring Organization. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The proposed amendment to §527.9 replaces "quality" review with "peer" review.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone in state or local government to perform any services.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone in state or local government to perform any services.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone in state or local government to perform any services.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that the rule will use peer review, which is the correct term. The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require anyone to perform any additional services.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require anyone in state or local government to perform any services.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§527.9. Procedures for a Sponsoring Organization.

(a) To qualify as a sponsoring organization, an entity must submit a peer [~~quality~~] review administration plan to the board for review and approval by the Quality Review Oversight Board (QROB). The plan of administration must:

(1) establish a peer [~~quality~~] review report committee (PRRC) [~~(QRRC)~~] and subcommittees as needed, and provide professional staff as needed for the operation of the peer [~~quality~~] review program;

(2) establish a program to communicate to firms participating in the peer [~~quality~~] review program the latest developments in peer [~~quality~~] review standards and the most common findings in the peer [~~quality~~] reviews conducted by the sponsoring organization;

(3) establish procedures for resolving any disagreement, which may arise out of the performance of a peer [~~quality~~] review;

(4) establish procedures to resolve matters which may lead to the dismissal of a firm from the peer [~~quality~~] review program, and conduct hearings pursuant to those procedures;

(5) (No change.)

(6) require the maintenance of records of peer [~~quality~~] reviews conducted under the program in accordance with the records retention rules of the AICPA; and

(7) provide for periodic reports to the QROB on the results of the peer [~~quality~~] review program.

(b) (No change.)

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

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §527.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.10 concerning Peer Review Report Committee. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The proposed amendment to §527.10 replaces "quality" review with "peer" review, replaces "his" state with "any" state, makes a couple of language corrections, and removes the prohibition that a person who serves on the ethic's committee of a state accountancy board or a state society could not also serve on the Board's Peer Review Report Committee ("PRRC").

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that the

rule will be easier to understand and a class of persons will now be eligible for consideration for being on the PRRC. The probable economic cost to persons required to comply with the amendment will be zero because the amendments do not require anyone to perform any services.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendments do not require anyone to perform any services.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§527.10. Peer [~~Quality~~] Review Report Committee.

A peer [~~quality~~] review report committee (PRRC) [~~(QRRC)~~] is comprised of CPAs practicing public accountancy and formed by a sponsoring organization for the purpose of accepting peer [~~quality~~] review reports submitted by firms on peer[~~quality~~] review engagements.

(1) Each member of a PRRC [~~QRRC~~] must be active in the practice of public accountancy at a supervisory level in the accounting or auditing function while serving on the committee. The member's firm must be enrolled in an approved practice-monitoring program and have received an unqualified report on its most recently completed peer [~~recent quality~~] review. A majority of the committee members must satisfy the qualifications required of on-site peer review team captains as established and reported in the AICPA Standards for Performing and Reporting on Peer Reviews, paragraph 92 [~~76~~].

(2) Each member of the PRRC [~~QRRC~~] must be approved for appointment by the governing body of the sponsoring organization.

(3) In determining the size of the PRRC [~~QRRC~~], the requirement for broad industry experience, and the likelihood of some members needing to recuse themselves during the consideration of some reviews as a result of the members' close association to the firm or having performed the review, shall be considered.

(4) No more than one PRRC [~~QRRC~~] member may be from the same firm.

(5) The PRRC [~~QRRC~~] members' terms shall be staggered to provide for continuity and should not exceed three years, subject to annual review, except for the governing body's appointment of the committee's chair or for filling a vacancy on the committee.

(6) A PRRC [~~QRRC~~] member may not concurrently serve as:

(A) a member of any [~~his~~] state's board of accountancy; or

(B) a member of any [~~his~~] state's CPA society's ethics committee.

(7) A PRRC [~~QRRC~~] member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence as defined in §501.11 of this title (relating to Independence) or has a conflict of interest. Examples of conflicts of interest include, but are not limited to:

(A) the member's firm has performed the most recent peer [~~quality~~] review of the reviewed firm's accounting and auditing practice;

(B) the member served on the review team, which performed the current or the immediately preceding review of the enrolled firm;

[~~(C) the member serves on the state board of accountancy or state society ethics committee of any state in which any office of the enrolled firm is located; and~~]

(C) [~~(D)~~] the member believes he cannot be impartial or objective.

(8) Each PRRC [~~QRRC~~] member must comply with the confidentiality requirements of §15B(c) of the Public Accountancy Act [~~of 1991~~]. The sponsoring organization may annually require its PRRC [~~QRRC~~] members to sign a statement acknowledging their appointments and the responsibilities and obligations of their appointments.

(9) A PRRC [~~QRRC~~] decision to accept a report must be made by not fewer than three members who satisfy the above criteria.

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

Filed with the Office of the Secretary of State, on June 9, 1999.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 305-7848

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22 TAC §527.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.11 concerning Responsibilities of Peer Review Report Committee. This amendment is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The proposed amendment to §527.11 replaces "QRRC" with "PRRC" and replaces "quality" review with "peer" review.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that the rule will use correct terms. The probable economic cost to persons required to comply with the amendment will be zero because the amendments do not require anyone in state or local government to perform any additional services.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 1, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendments do not require anyone in state or local government to perform any additional services.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§527.11. Responsibilities of Peer [~~Quality~~] Review Report Committee.

The PRRC shall:

(1) [~~(a) The QRRC shall~~] establish and administer the sponsoring organization's peer [~~quality~~] review program in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews.

(2) [~~(b) The QRRC shall,~~] when necessary in reviewing reports on peer [~~quality~~] reviews, prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures.

(3) [~~(c) The QRRC shall~~] monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm.

(4) [~~(d) The QRRC shall~~] resolve instances in which there is a lack of cooperation and agreement [~~disagreement~~] between the committee and review teams or reviewed firms in accordance with the sponsoring organization's adjudication process.

(5) [~~(e) The QRRC shall~~] act upon requests from firms for changes in the timetable of their reviews.

(6) [~~(f) The QRRC shall~~] appoint members to subcommittees and task forces as necessary to carry out its functions.

(7) [~~(g) The QRRC shall~~] establish and perform procedures for insuring that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews.

(8) [~~(h) The QRRC shall~~] establish a report acceptance process, which facilitates the exchange of viewpoints among committee members.

(9) [~~(i) The QRRC shall~~] communicate to the governing body of the sponsoring organization on a recurring basis:

(A) [~~(1)~~] problems experienced by the enrolled firms in their systems of quality control as noted in the peer [~~quality~~] reviews conducted by the sponsoring organization;

(B) [~~(2)~~] problems experienced in the implementation of the peer [~~quality~~] review program; and

(C) [~~(3)~~] a summary of the historical results of the peer [~~quality~~] review 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.

Filed with the Office of the Secretary of State, on June 9, 1999.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Subchapter F. Education, Experience, Educational Programs, Time Periods and Type of License

22 TAC §§535.61-535.64, §535.66, §§535.68-535.70

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

The Texas Real Estate Commission (TREC) proposes the repeal of §535.61, concerning examinations and acceptance of courses, §535.62, concerning waiver of examinations, §535.63, concerning broker education and experience, §535.64, concerning salesperson education, §535.66, concerning accreditation of educational programs, §535.68, concerning broker alternative education and experience, §535.69, concerning additional core real estate courses and §535.70, concerning required coursework. The subjects addressed in these sections will be covered in new sections TREC is proposing for adoption as part of its rule review process. Adoption of the repeals is necessary to reduce the volume of TREC's rules and make the rules easier for the public to use.

Mark A. Moseley, general counsel , has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals. There is no anticipated impact on local or state employment as a result of implementing the repeals.

Mr. Moseley also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals will be a reduction in the number of TREC rules and greater ease in reading the remaining rules. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeals are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.61. Examinations and Acceptance of Courses.
§535.62. Waiver of Examination.
§535.63. Brokers: Education and Experience.
§535.64. Salespersons: Education.
§535.66. Educational Programs: Accreditation.
§535.68. Brokers: Alternative Education and Experience.
§535.69. Additional Core Real Estate Courses.
§535.70. Required Coursework.

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

Filed with the Office of the Secretary of State, on June 11, 1999.

TRD-9903461
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 465–39000

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TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 134. Benefits–Guidelines for Medical Services, Charges, and Payments

Subchapter K. Treatment Guidelines

28 TAC §134.1001

The Texas Workers' Compensation Commission ("Commission") proposes an amendment to §134.1001, concerning the Spine Treatment Guideline.

The Spine Treatment Guideline (STG) clarifies those services that are reasonable and medically necessary for care of the spine for the injured employees of Texas. The guideline is not to be used as a fixed treatment protocol, but rather identifies a normal course of treatment and reflects typical courses of intervention, while recognizing that there will be injured employees who will require less or more treatment than is outlined. The guideline also acknowledges that in atypical cases, treatment falling outside the guideline will occasionally be necessary. However, those cases that exceed the guideline level of treatment are subject to more careful scrutiny and review and require documentation of the special circumstances that justify the treatment. The guideline does not prescribe the type and frequency of treatment; treatment must be based on patient need and the health care provider's professional judgment. The rule is designed to function as a guideline and is not to be used as the sole reason for denial of treatments and services.

Proposed amendments to §134.1001 contain 1999 Current Procedural Terminology (CPT) codes as published in the Physician's Current Procedural Terminology, 1999, (American Medical Association, copyright 1998). These CPT Codes and nomenclature only are Copyright 1998 American Medical Association.

The guideline promotes quality health care, injury specific treatment and appropriateness of care, by identifying clinically acceptable courses of care for spine injuries, and by facilitating communication between all parties in order to achieve rapid recovery from the effects of an injury. This communication will also promote a timely return to modified or full duty work that takes into account the job demands and the functional capabilities of the injured employee.

The Commission considered all relevant statutory and policy mandates and objectives and designed this rule to achieve those mandates and objectives, including the following:

(1) the establishment of medical policies and guidelines relating to use of medical services by employees who suffer compensable injuries;

(2) the establishment of medical policies relating to necessary treatments for injuries which are designed to ensure the quality of medical care and designed to achieve effective medical cost control;

(3) the establishment of a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatment and services; and

(4) the establishment of a program for systematic monitoring of the necessity of treatments administered, for detection of practices and patterns by insurance carriers in unreasonably denying authorization of payment, and for increasing the intensity of review for compliance with medical policies or fee guidelines.

Section 134.1003 as proposed for amendment will achieve these objectives by:

(1) identifying services that are reasonable and medically necessary for treatment of spine injuries;

(2) assisting all parties with regard to the appropriate treatment and management of disorders of the spine in employees' compensation healthcare;

(3) establishing a guideline against which aspects of care can be compared;

(4) identifying clinically acceptable courses of care for spine injuries;

(5) establishing documentation standards which support the appropriateness of the level of service for assessment/evaluation and on-going treatment;

(6) providing a mechanism for prospective, concurrent, and retrospective review to ensure efficient and effective health care utilization; and

(7) establishing normal courses of treatment based on clinical indicators at different levels of healing.

In accordance with the statutory objectives and Commission policy, the Spine Treatment Guideline seeks to balance the need for cost control and review with the need for access to quality medical care by establishing typical courses of treatment, but allowing treatment outside the set parameters with additional documentation of the need for the treatment.

Quality of medical care is ensured by reliance upon input from experts and recognized studies in the field of spine treatment. The guideline ensures access to health care and that quality care will be available in each individual case by its ground rules that allow for treatment outside the stated parameters.

Effective medical cost control is achieved by establishing parameters for eligibility and termination of treatment, by setting documentation standards which support the appropriateness of the treatment; by requiring additional documentation for treatment falling outside the guideline's parameter; and by providing that treatments for the spine are subject to the Commission's separate rule requiring insurance carrier preauthorization for certain treatments as a prerequisite to payment for the services.

The guideline allows for prospective, concurrent, and retrospective review of treatment by: setting standards for eligibility and treatment and setting documentation standards. These standards are to be used by health care providers as a basis for prospective review of possible treatment. The guideline and the documentation requirements should also provide the health care provider with a means to justify treatments when questioned concurrently or retrospectively by an insurance carrier.

The guideline and documentation also provide a starting point for insurance carriers in conducting prospective, concurrent, or retrospective review of treatment. The Medical Review Division and the Compliance and Practices Division will use the guideline and documentation as a tool for prospective, concurrent, and retrospective review of treatment, including use in conducting audits of health care providers and insurance carriers, use in the establishment of a program for systematic monitoring of the necessity of treatments administered, and use in medical dispute resolution.

The guideline also promotes quality health care, injury specific treatment and appropriateness of care, by facilitating communication between all parties in order to achieve rapid recovery from the effects of an injury. This communication will also promote a timely return to modified or full duty work that takes into account the job demands and the functional capabilities of the injured employee.

The rule will promote quality health care and injury specific treatment for injured employees by identifying clinically acceptable courses of care for specific spine injuries. Another benefit will be that the rule will provide a mechanism to monitor the necessity of treatment administered and establish treatment parameters, thus providing greater efficiency in the provision of treatment to the injured employee for spine injuries.

The clinical and diagnostic treatment guidelines contained in this proposed amendment have been developed in conjunction with health care providers and other parties in the employees' compensation system. The Commission's Medical Review Division began its review of the STG by conducting a focus group with insurance carriers in 1997. The Commission invited eight different insurance carriers to participate in this focus group. The purpose of the meeting was to collect feedback on the STG from the insurance carriers' perspective. The following insurance carriers were represented at this focus group, Forte, Intracorp, Cigna, Corvel Corporation, Kemper National Services, Liberty Mutual, Texas Association of School Boards and the Texas Workers' Compensation Insurance Fund.

The Medical Review Division also contacted the Spine Treatment Guideline Workgroup members, who assisted in drafting the guideline in 1994, composed of members from the following areas of medical practice and business: chiropractic, neurosurgery, orthopaedic surgery, physical medicine and rehabilitation, family practice, physical therapy, occupational therapy, osteopathic medicine and insurance. Workgroup members were asked to review the guideline, recommend changes, and give feedback on the guideline's use and effectiveness since it was adopted. The Medical Review Division also conducted separate focus groups with medical doctors and chiropractors in Austin, Dallas, El Paso, Houston and San Antonio. These focus groups gave feedback on the guidelines' use and recommended changes.

The Commission formed a Spine Treatment Guideline Revision Workgroup (STGRW) to review the recommendations from all these different groups and consider new treatments for inclusion in the STG. The STGRW was composed of members from the following areas of medical practice and business: chiropractic, neurosurgery, orthopaedic surgery, physical medicine and rehabilitation, occupational medicine, physical therapy, occupational therapy, osteopathic medicine and insurance. The workgroup

met in January, February, March and April of 1999 and reviewed treatments currently in the STG to determine if they were still reasonable and medically necessary. The workgroup recommended adding parameters to some of the treatments to clarify when these treatments are reasonable and medically necessary.

The workgroup also reviewed 10 new treatments identified through the feedback collected. Out of the 10 reviewed, only acupuncture is recommended for addition to the STG. The workgroup used reports of scientific research as well as their own expertise and practice experience in developing their recommendations. Intradiscal electrothermal annuloplasty was not recommended for inclusion in the STG because of insufficient data at the time of their review to warrant inclusion. The STGRW also considered the following treatments but found there was little or no scientific literature to support their inclusion in the STG: magnet therapy, vitamin therapy and prolo therapy. In addition, the following treatments were reviewed, but were found to have contradictory results in the medical literature and insufficient support to warrant inclusion in the STG: vertebral axial decompression and botox.

The STGRW also discussed current perception threshold, a type of sensory conductive test, and agreed that there was supporting literature for its effectiveness in some medical conditions but that there was little evidence to warrant its use for musculoskeletal conditions. Therefore the STGRW recommended that this treatment not be included in the STG. The STGRW also discussed nerve conduction velocity studies and somatosensory evoked potentials. The STGRW concluded that somatosensory evoked potentials were appropriate only for intraoperative monitoring and that repeated studies have extremely limited application. The STGRW did not recommend that these studies be included in the STG.

The STGRW considered recommendations made by the Texas Workers' Compensation Commission's Medical Advisory Committee. By statute, the MAC advises the division in developing and administering the medical policies, fee guidelines, and utilization guidelines established under the Texas Labor Code, §413.011. The MAC is composed of members from the following fields, appointed by the Commission: public health care facility, private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a pharmacist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, a representative of employers, a representative of employees, and two representatives of the general public. The Medical Advisory Committee formed the Guideline Standardization Subcommittee (GSS) to review all treatment guidelines and recommend changes which make all treatment guidelines consistent. The STGRW considered recommendations made by the GSS and recommendations made by the focus groups and the original STG workgroup. The MAC reviewed and endorsed recommendations made by the GSS and the STGRW as well as making some additional recommendations.

The Texas Register published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

A number of changes are proposed to make the text portion of the STG consistent with the recently adopted Upper Extremities Treatment Guideline (UETG) and the Lower Extremities Treatment Guideline (LETG). Because musculoskeletal injuries are similar in the workers' compensation system and involve similar treatments, consistency between all treatment guidelines will minimize confusion and ensure that the guidelines address similar issues in the same way.

Proposed subsection (a) corrects references to other subsections of the rule in the table of contents.

In addition, a number of changes are proposed for grammatical and form consistency between the STG and the UETG and the LETG and do not substantively alter the guideline.

The term "Primary Gatekeeper" has been changed to "Treating Doctor" in proposed subsections (a)(2) and (c) to make them consistent with the UETG and the LETG and with terms used generally in the workers' compensation system.

Proposed subsection (b)(1) and (2) change the Purpose and Goals statements to make them consistent with the UETG and the LETG. A new proposed phrase in subsection (b)(1) clarifies the purpose by stating that treatments and services will not be automatically deemed as reasonable and necessary because the treatment or service is listed in the guideline.

Subsection (b)(2)(C) has been reworded to clarify that the guideline addresses treatment for a compensable injury and to make it consistent with the UETG and the LETG.

Proposed changes to subsections (c)(3) and (5), and (d)(1) make the wording in the STG consistent with the UETG and the LETG.

Proposed changes to subsection (d)(1)(E) make it consistent with the UETG and the LETG and also cross-reference other sections of the guideline that refer to the same subject. This cross-referencing helps the reader access related sections of the guideline with ease.

Proposed changes to subsection (d)(1)(F) clarify return to work options (either full or modified duties) for the injured employee.

In a number of places throughout the guideline, terms such as "will" and "should" have been changed to "shall." Also passive language has been replaced with active tense. These changes make the STG more consistent with the UETG and the LETG and also provide additional clarity. Such language changes were placed in proposed subsections (d)(2), (d)(2)(A), (d)(3), (e)(1), (e)(2)(H) and (e)(3)(B).

Proposed subsection (d)(2)(D) and (E) have been changed to make the STG consistent with the UETG and the LETG. Proposed subsection (d)(2)(F) has been added to the STG to make it consistent with the UETG and the LETG.

Proposed subsection (d)(4), (5), and (6) have been changed to make them consistent with the UETG and the LETG. In addition, subsection (d)(2), the Application Tables in the current guideline, have been deleted as a result of a recommendation made by the workgroup and the MAC. The tables describe the process and the documentation requirements needed for health care providers and insurance carriers during the treatment of the injured employee. The workgroup considered that this information gave needed guidance to the parties in the system when the STG was first adopted but is now outdated and should be deleted unless public comment indicates a need for these tables.

Proposed subsection (e)(1) and (2) have been changed to make them consistent with the UETG and the LETG. In addition, the workgroup and the MAC recommended adding the term "most

appropriate" in subsection (e)(2)(A)(iii) to describe "least intensive setting." This addition would clarify that appropriateness is also a consideration in choosing a treatment setting.

In proposed subsection (e)(2)(B) and in other sections throughout the rule, the term "plan of treatment" has been replaced with "treatment plan" for consistency with the UETG and the LETG.

Proposed subsection (e)(2)(C) includes changes that are proposed both to make this section consistent with the UETG and the LETG as well as changes recommended by the workgroup and the MAC. The workgroup and MAC recommended that the term "patient" be replaced with "injured employee" to keep it consistent with language used throughout the guideline. They also recommended replacing the term "must" with "should" because the health care provider cannot control whether the injured employee fully understands his/her role in the recovery process. This subsection also contains a cross-reference to other sections of the guideline that address the same subject. The cross-referencing helps the reader access related sections of the guideline with ease.

The workgroup reviewed treatments currently in the STG to determine if they were reasonable and medically necessary. The workgroup recommended adding parameters to some of the treatments to clarify when these treatments are reasonable and medically necessary. Proposed subsection (e)(2)(D), (E), (F), (G), (L), (S), and (T) were added to clarify when these treatments are reasonable and necessary. The treatments listed in these subsections appear in the treatment tables sections of the guideline and include: outpatient evaluation and therapies, manipulation, chronic pain management programs, TENS units, rehabilitation programs (work conditioning, work hardening and outpatient medical rehabilitation), spinal injections, and trigger point injections. This new language adds clarity regarding the appropriateness and purpose of the treatments.

Proposed subsection (e)(2)(H) includes new language that the STGRW and the MAC recommended to emphasize that return to work planning should commence as early as possible for severe injuries. The STGRW and the MAC recommended this change because early planning for severe injuries allows for comprehensive rehabilitation before the injured employee reaches statutory MMI.

Proposed subsection (e)(2)(J) is changed to make it consistent with the UETG and the LETG.

Proposed subsection (e)(2)(K) is changed to make it consistent with the UETG and the LETG and to reflect recommended terminology changes made by the Guideline Standardization Subcommittee (GSS) and the MAC. These recommendations included changing "levels of care" to "phases of care" and are reflected throughout the guideline. The GSS recommended this change because the term "phase" more accurately captured the medical process. This change also appears in subsections (e)(3)(B), (g), (g)(2), (g)(3), (g)(5), (g)(7), (g)(7)(A), (g)(7)(B), and (g)(7)(C), (j)(2)(A), and deletion of the term "level of service" in the glossary. Deletion of current subsection (e)(2)(I) is proposed as recommended by the STGRW and the MAC. This recommendation was made because the content of subsection (e)(2)(I) is now included in the 1996 Medical Fee Guideline. This section addresses mental health evaluations when used exclusively to assess the injured employee's readiness for work hardening and describes which mental health services are independent or inclusive of multidisciplinary programs such as work hardening. These issues are well addressed in the MFG and thus are no longer needed in the STG.

Proposed subsection (e)(2)(M) changes the term "secondary" to "intermediate" to reflect recommendations by the GSS and the MAC. The GSS recommended this change because the term "intermediate" more accurately describes the healing phase than the term "secondary." This change also appears in subsections (g)(3), (g)(7)(B), (C), (D), and (i)(7).

Proposed subsection (e)(2)(N) and (O) are changed to make them consistent with the UETG and the LETG.

Proposed subsection (e)(2)(Q) reflects changes recommended by the STGRW and the MAC. These changes update the indications for the use of bone growth stimulators.

Proposed subsection (e)(2)(R) was reworded and reorganized by the STGRW and supported by the MAC. The rewording makes the subsection clearer. Current subsection (e)(2)(R)(ii) was deleted because the workgroup felt it was an inappropriate objective for interventional pain procedures.

Proposed subsection (e)(2)(U) adds acupuncture to the services used for the care of the spine. The STGRW and the MAC recommended this addition and added this subsection to give indications for the appropriate use of acupuncture. The STGRW reviewed literature regarding the results of scientific research on acupuncture treatment and used their experience in treating patients who benefitted from the treatment of acupuncture to make their recommendation. The STGRW and the MAC recommended adding acupuncture because it has been successfully used for the treatment of spine injuries within the parameters set forth in subsection (e)(2)(U).

Proposed subsection (e)(2)(Y) is added for consistency with the UETG and the LETG.

Proposed subsection (e)(3)(A) and (B) are changed in part for consistency with the UETG and the LETG.

Proposed subsection (e)(3)(B)-(F) include new language that corresponds with proposed subsection in the ground rules for outpatient evaluation and therapies, rehabilitation programs (work conditioning, work hardening, and outpatient rehabilitation), manipulation, and TENS units. This new language is added based on recommendations from the STGRW and the MAC and sets out guidelines for objective documentation of the need to continue these treatments.

Proposed subsection (e)(3)(G), (H) and (4) are changed to make them consistent with the UETG and the LETG.

Proposed subsection (f)(2)(J) is moved to subsection (f)(2)(N) because the time line recommendation for the performance of discography is no longer as listed in the current STG. Proposed new subsection (f)(2)(N) places discography towards the end of the list of diagnostics which is more appropriate with the new indications recommended by the STGRW and the MAC and gives a description of a discogram. Proposed subsection (f)(3)(C) provides time recommendations for the performance of discography, gives guidance for their use, and lists specific indicators that must occur for discography to be appropriate. These changes are made to improve the quality of care the injured employee receives by allowing for this diagnostic test to be done when it is most appropriate. In addition, the indications for discography also appear as part of the surgical algorithms in subsection (i)(8).

Proposed subsection (f)(2)(L) and (M) cross-reference selective nerve root injections and facet injections to new subsection (e)(2)(S)(ii) and (iv) because these new subsections list indications for these injections. Subsection (f)(2)(L) changes the wording which requires fluoroscopy to make it consistent with the wording requiring fluoroscopy in subsection (f)(2)(M).

It is proposed that current subsection (f)(2)(O) listing "physical capacity evaluation" be deleted because this procedure is now rarely performed alone and is usually part of a functional capacity evaluation which is already listed. This recommendation has also resulted in changes to subsections: (f)(3)(D), (g)(7)(A), (g)(7)(C), (h)(2) and deletion of subsection (h)(2)(C).

Proposed subsection (f)(3)(A), (B), and (C) change the term "treatment" to "diagnostics" to reflect that these are diagnostic interventions rather than treatments.

Proposed subsection (g)(1) deletes the current introduction section and replaces it with new language that clarifies the content of this subsection and makes it consistent with the UETG and the LETG.

Proposed subsection (g)(2) changes the term "primary" to "initial" as recommended by the GSS and the MAC. The GSS recommended this change to all treatment guidelines because the term "initial" more accurately describes the healing phase than "primary." Other changes to this subsection make it consistent with the UETG and the LETG. This change also appears in subsections (g)(7)(A), (C), (D), and (i)(7).

Proposed subsections (g)(4) and (g)(5) change the language to make it consistent with the UETG and the LETG.

Proposed new subsection (g)(6) adds language to describe treatment for all treatment guidelines beyond the tertiary phase. This subsection was added as a recommendation from the GSS. The MAC reviewed the new language and recommended it be included in the STG revision. This new subsection would clarify that there are some cases where the injured employee requires treatment after reaching MMI or after completing the tertiary phase of treatment. This new subsection describes the treatment typically provided. The section also repeats the responsibilities for the health care providers and insurance carriers that are listed in other sections of the guideline to ensure these responsibilities are adhered to when evaluating post-tertiary care.

Proposed changes to the Initial, Intermediate and Tertiary Phases of Care treatment tables include the following. The heading "Types of Intervention" has been changed to "Treatment Intervention" to make the STG consistent with the UETG and the LETG and because the term treatment more accurately represents the items included in this section. The heading "Clinical or Behavioral Indicators" has been changed to "Clinical Indicators" to make the STG consistent with the UETG and the LETG. "Attended Procedures," "Concurrent Home Program," and "Unattended Modalities," have been replaced with "Outpatient Evaluation and Therapy" which is subdivided into "Attended Modalities and Procedures", "Unattended Modalities" and "Concurrent Home Programs." These changes make the treatment tables consistent with the UETG and the LETG and help clarify related services by listing them under one heading. "Job Site Analysis" and "Functional Capacity Evaluations" have been moved from the Treatment Intervention section to the Return To Work Issues section. These changes are made to make the STG consistent with the UETG and the LETG and because these evaluations are not treatments and are therefore more appropriately listed under the Return To Work Issues section.

Proposed changes to the Initial Phase of Care treatment table include the following. The sentence listed in the Goal of Initial Intervention section has been changed to make it consistent with the wording that appears in subsection (g)(2) which describes the initial phase of care. "Biofeedback" was deleted based on a recommendation from the STGRW and the MAC, that "Biofeedback" is not appropriate for this phase of care.

The STGRW and the MAC recommended that the term "Mental Health Intervention" be replaced with "Mental Health Evaluation." Although the UETG and the LETG do not include this treatment at the initial phase, the STGRW recommended it be included in the STG because the need for a mental health evaluation for spine injuries is more likely than for extremity injuries.

It is proposed that the term "Pharmaceutical Treatment" be replaced with the term "Medication" to make it consistent with the UETG and the LETG.

In the proposed phases of care tables the following treatments have a cross-reference added to refer the reader to new ground rules which describe the appropriate use of the treatment: acupuncture, diagnostic testing, injections, outpatient evaluation and treatment, and TENS units. The term "pain/symptom control" has been deleted from the treatment intervention section because it is already covered under other treatments listed.

Proposed changes to the Intermediate Phase of Care Treatment Table are as follows. The Description section would be changed to make this section consistent with the description that appears in subsection (g)(3). In the Goal of Intermediate Intervention section "work return" has been replaced with "return to work" to reflect the terms more commonly used in the field. Under the Treatment Intervention section "Biofeedback" is deleted based on the STGRW's recommendation because "Biofeedback" is covered under "Behavioral Pain Management" which is already listed. "Conditioning" is deleted because it falls under the newly listed "Outpatient Evaluation and Therapy" heading. The term "Diagnostic" is deleted from "Diagnostic Injections" because these injections can be both diagnostic and therapeutic. "Behavioral Pain Management/Relaxation Training" is removed from under the heading "Education" and listed separately as "Behavioral Pain Management." "Relaxation Training" is not listed because it falls within the scope of "Behavioral Pain Management" and does not need to be listed separately. "Chronic Pain Management" has been deleted from under the heading "Single or Interdisciplinary Programs" because the STGRW believed these programs are appropriate only after 6 months of chronic pain. Therefore such programs are not appropriate for the Intermediate Phase of Care which is typically only 0 to 8 weeks long. The term "Limited program activity with access to health care providers as referrals and/or consultants" is deleted because it is not a treatment intervention and is dealt with elsewhere in the guideline. The term "Limited Unattended Modalities only in conjunction with Attended Procedures" is deleted because this is covered under the heading "Outpatient Evaluation and Therapy". The term "Medication Modification" has been changed to "Medication" to make it consistent with UETG and the LETG. The terms "Post-op Phase as limited rehabilitation" and "Rule in/rule out surgery" are deleted because these are not treatment interventions. The

term "Single" is added to the term "Interdisciplinary Programs" to accurately describe the programs listed under this heading. "Work Conditioning" is added under this heading because it is a program which is appropriate at this phase of care. The following treatments have a cross-reference added to refer the reader to the new ground rules which describe the appropriate use of the treatments: Injections, Diagnostic Testing, and Outpatient Evaluation and Therapy.

Proposed changes to the Tertiary Phase of Care Treatment Table include the following. The term "claimant" is replaced with "injured employee" for consistency throughout the guideline. The word "final" is replaced with"tertiary" in the Goal of Tertiary Intervention section, since the tertiary phase is not always the final phase of care for injured employees. In the Treatment Intervention section "Relaxation Training" is deleted because it falls within the scope of "Behavioral Pain Management" and does not need to be listed separately. The term "Single" is added to the term "Interdisciplinary Programs" to accurately describe the programs listed under this heading. "Work Conditioning" is added under the heading of "Single or Interdisciplinary Programs" because it is a program appropriate for this phase of care. The term "Medication" is added in this section because it is an appropriate treatment intervention for this phase of care and to make the STG consistent with the UETG and the LETG. The following treatments have a cross-reference added to refer the reader to the new ground rules which describe the appropriate use of the treatments: Diagnostic Testing, Chronic Pain Management, and Outpatient Evaluation and Therapy.

A sentence is added to the "Return To Work Issues" section of the Tertiary Phase of Care table to include the possibility of vocational rehabilitation services by the Texas Rehabilitation Commission for injured employees who are unable to return to work after the tertiary phase of care. This is added to reflect procedures that are currently in place. "Assessments" is replaced with the word "evaluations" in proposed subsection (h)(3)(B) because this is the more commonly used term in the medical community.

Proposed subsection (i)(2) has been updated to list 1999 Current Procedural Terminology (CPT) codes as published in the Physician's Current Procedural Terminology, 1999, (American Medical Association, copyright 1998). Similarly subsection (i)(7)(A), (B) and (C) have been updated to use 1999 CPT codes.

Proposed subsection (i)(7) changes "intercostal" to "radiating chest wall" to clarify the meaning of this chart.

Changes to the glossary, subsection (j), are proposed for clarification and to make the STG consistent with the UETG and the LETG. These changes are made as a result of a recommendation by the GSS and the MAC to make the glossaries of all treatment guidelines consistent. The following terms were added to the glossary: acceptable standards of care, acute, aggravation, algorithm, assessment/evaluation, chronic, compensable injury, decomposition, diagnosis, diagnostic module, diagnostic test, exacerbation, examination, first, first doctor, focus review, frequency of intervention, functional capacity evaluation, health care, initial phase of care, intermediate phase of care, intermediate treatment, medical necessity, module, objective findings, phases of care, proper clinical documentation, reason for denial, referral, screening criteria, single point of contact, standard, static, subacute, subjective complaints, tertiary phase of care, tertiary treatment, time limited, and treatment module. In addition, the following terms include other changes: in subsection (j)(11)(A) the word "change" is replaced with "objective improvement" to clarify the definition; and in subsection (j)(11)(B) the word "objective" is also added to clarify the definition.

Proposed subsection (j)(35) is amended to update the definition of MMI so that it is consistent with changes to the Texas Labor Code and to make the STG consistent with the UETG and the LETG.

Proposed subsections (j)(31), (49), (58), and (59) are changed to make the definitions consistent with the UETG and the LETG.

Proposed subsection (j)(47) and (52) are changed to incorporate changes recommended by the GSS and the MAC to the definitions of "Significant Neurological Deficit" and "Strain."

A proposed new section titled "Revised Bibliography" has been added to reflect the additional references used by the STGRW.

Other changes to subsections (b), (c), (d), (e), and (f) are proposed for clarity of language, consistency with the UETG and the LETG, and/or grammatical improvement.

Victor Rodriguez, Finance Manager, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

For the first five years the proposed amendment is in effect, local government as a regulating entity is expected to have no additional or reduced costs and no loss or increase in revenue because it does not regulate under this rule. Because the Guideline is currently in effect, state government is expected to have no additional or reduced costs and no loss or increase in revenue as a result of enforcing or administering the proposed amendments to the rule. Local government and state government as covered regulated entities will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Rodriguez has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be the promotion of quality health care and injury specific treatment for injured employees by identifying clinically acceptable courses of care for spine injuries. The rule will provide a mechanism to monitor the necessity of treatment administered and establish treatment parameters, and guidelines relevant to prospective, concurrent, and retrospective review of treatment, thus providing greater efficiency in the provision of spine treatment to the injured employee.

There are no anticipated economic costs to persons required to comply with the rule as proposed because the Guideline is currently in effect and the proposed amendments would not result in economic costs. There will be no adverse economic impact on small businesses. There will be no difference in cost of compliance for small business compared to larger businesses.

Comments on the proposal or requests for public hearing must be submitted to Donna Davila by 5:00 p.m. July 26, 1999, at Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. A public hearing on this proposed rule is tentatively scheduled for August 4, 1999, at the Austin office of the Commission (Southfield Building, 4000

South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing. The rule as adopted may be revised from the rule as proposed. Persons in support of the rules as proposed, in whole or part, may wish to comment to that effect.

The amendment is proposed under the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act, and the Texas Labor Code, §413.011, which authorizes the Commission to establish by rule medical policies and guidelines relating to necessary treatments for injuries, and the Texas Labor Code, §413.013, which authorizes the Commission to establish by rule a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; and to establish by rule a program for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments or services, including the authorization of prospective, concurrent, or retrospective review under the medical policies of the Commission to ensure that the medical policies or guidelines are not exceeded. These statutory provisions clearly authorize the Commission to adopt a rule such as §134.1001 which includes guidelines relating to necessary treatments.

The rule affects the Texas Labor Code, §§402.061, 413.011, 413.013.

§134.1001. Spine Treatment Guideline.

(a) Table of Contents. The following headings and their corresponding subdivisions comprise a table of contents for this section.

(1) (No change.)

(2) Role of Treating Doctor [~~Primary Gatekeeper~~] - subsection (c).

(A) Statutory Requirements - subsection (c)(1).

(B) Treating Doctor [~~Primary Gatekeeper~~] Responsibilities - subsection (c)(2).

(C) Referrals - subsection (c)(3).

(D) Diagnostics - subsection (c)(4).

(E) Expectation and Compliance - subsection (c)(5).

(3) Application Instructions for Involved Parties - subsection (d).

(A) Health Care Provider [~~Concepts and Governing Principles~~] - subsection (d)(1).

(B) Insurance Carriers [~~Application Matrix Table~~] - subsection (d)(2).

(C) Medical Review Division - subsection (d)(3).

(D) Consulting or Peer Review Health Care Provider - subsection (d)(4).

(E) Injured Employee - subsection (d)(5).

(F) Employer - subsection (d)(6).

(4) (No change.)

(5) Diagnostic Procedures - subsection (f).

(A) Introduction - subsection (f)(1).

(B) List of Diagnostic Interventions - subsection (f)(2).

(C) Time Recommendations for Listed Diagnostic Interventions [~~Procedures~~] - subsection (f)(3).

(6) Phases [~~Levels~~] of Nonoperative Care - subsection (g).

(A) Introduction to Nonoperative Treatment Tables - subsection (g)(1).

(B) Initial [~~Criteria in Primary Intervention~~] Phase [~~Primary Level~~] of Care - subsection(g)(2).

(C) Intermediate [~~Referral Criteria in Secondary Intervention~~] Phase [~~Secondary Level~~] of Care - subsection (g)(3).

(D) [~~Referral Criteria in Tertiary Intervention Phase~~] Tertiary Phase [~~Level~~] of Care - subsection (g)(4).

(E) Criteria to Distinguish between Intermediate [~~Secondary~~] and Tertiary Phases of Care - subsection (g)(5).

(F) Post-tertiary Treatment - subsection (g)(6).

(G) Phase [~~Levels~~] of Care Tables - subsection (g)(7) [~~(g)(6)~~].

(7) Assessments/Evaluations - subsection (h).

(A) Interdisciplinary Assessment - subsection (h)(1).

(B) [~~Physical Capacity and~~] Functional Capacity Evaluations [~~Assessments~~] - subsection (h)(2).

(C) Appropriate and Inappropriate Testing - subsection (h)(3).

(8) Treatment Algorithms - subsection (i).

(A) Introduction to Algorithms - subsection (i)[~~(1)~~].

(B) Surgical Treatment Code Legend - subsection (i)(1) [~~(2)~~].

(C) Initial Approach to Treatment of Spinal Injury Chart 1 - subsection (i)(2) [~~(3)~~].

(D) Fracture and/or Dislocation Chart 2 - subsection (i)(3) [~~(4)~~].

(E) Soft Tissue Injury Chart 3 - subsection (i)(4) [~~(5)~~].

(F) Peri-Operative Algorithm Chart 4 - subsection (i)(5) [~~(6)~~].

(G) Surgical Treatment Chart 5 - subsection (i)(6) [~~(7)~~].

(H) Surgical Treatment Subchart Chart 5A - subsection (i)(6) [~~(7)~~](A).

(I) Surgical Treatment Subchart Chart 5B - subsection (i)(6) [~~(7)~~](B).

(J) Surgical Treatment Subchart Chart 5C - subsection (i)(6) [~~(7)~~](C).

(K) Treatment Continuation Chart 6 - subsection (i)(7) [~~(8)~~].

(9) Glossary - subsection (j).

(10) Bibliography - subsection (k).

(11) Revision Bibliography - subsection (l).

(b) Introduction.

(1) Purpose. The purpose of this guideline is to clarify those services that are reasonable and medically necessary for operative and nonoperative care of [~~to~~] the spine for the injured employees [~~workers~~] of Texas. This guideline identifies a normal course of treatment. There may be injured employees who will require more or less treatment than is recommended in this guideline. [~~It is anticipated that there will be injured workers who will require less treatment than the average and other injured workers who will require more treatment.~~] This is a guideline and shall not be used as the sole reason for denial [~~of treatments and services.~~] when a treatment or service is not listed in the guideline. Similarly the guideline shall not be used as the sole reason for accepting the treatment or service as reasonable and medically necessary simply because the treatment or service is listed in the guideline.

(2) Goals. The[~~following subparagraphs outline the~~] primary goals of this guideline are:

(A) to assist all parties with regard to the appropriate treatment and management of disorders of the spine;

(B) to establish elements against which aspects of care can be compared;

(C) to establish a guideline to identify services that are reasonable and medically necessary for [~~clinically acceptable courses of~~] treatment of the compensable injury;

(D) to establish documentation standards which support the appropriateness of the level of service; and

(E) to provide a mechanism of prospective, concurrent, retrospective review for efficient and effective health care utilization.

(3) (No change.)

(4) Philosophy of Care. The health care of the injured employee [~~worker~~] is a coordinated team effort. All parties including employees, employers, health care providers, insurance carriers and the Texas Workers' Compensation Commission should promote quality health care, injury specific treatment and appropriateness of care. Communication between all parties must remain open in order to achieve rapid recovery from the effects of the injury. This communication should promote a timely return to modified or full duty work that takes into account the job demands and the functional capabilities of the injured employee [~~worker~~].

(c) Role of Treating Doctor (Primary Doctor/Gatekeeper) [~~Primary Gatekeeper~~].

(1) (No change.)

(2) Treating Doctor [~~Primary Gatekeeper~~] Responsibilities.

(A) The role of the treating doctor is an important role which requires the treating doctor to monitor all health care services being provided for the injured employee [~~worker~~]. These responsibilities of the treating doctor are vital aspects of the goal to ensure that the injured employee [~~worker~~] receives quality health care. This monitoring extends to ensure:

(i)-(viii) (No change.)

(B) Refer to §126.9 of this title [~~and §133.3 of this title~~] (relating to Choice of Treating Doctor and Liability) for Payment; and §133.3 of this title (relating to Responsibilities of Treating Doctor),[~~respectively~~] for responsibilities of the treating doctor.

(3) Referrals. The treating doctor is responsible for recommending timely and appropriate referrals. The treating doctor must clearly delineate the clinical rationale for all referrals. The documentation contained in the TWCC required reports [~~64~~] should clearly outline whether the purpose of the referral is to corroborate the diagnosis and/or proposed course of treatment or to initiate ongoing treatment. [~~It is appropriate for the treating doctor to document and explain the referral in the TWCC 61 or TWCC 64.~~] Once a consultation or referral has occurred, the consulting or referral doctor should submit a summary report or initiate a case management phone call back to the treating doctor. [~~This communication by the consulting or referral doctor is necessary to enable the treating doctor to meet his responsibility to submit a TWCC 64 every (60) days.~~]

(4) Diagnostics. Diagnostic work should be performed in accordance with the recommended testing and timeframes contained in this guideline. If the need arises to deviate from the guideline, then a clinical rationale must be provided which adequately substantiates the need for this deviation. The need to repeat previously completed diagnostic procedures due to the quality of the study may trigger a review. All health care providers involved in the treatment of an injured employee [~~worker~~] must share copies of all diagnostic studies, film and reports in order to avoid unnecessary duplication of procedures. Section 133.2 of this title (relating to Sharing Medical Reports and Test Results) addresses the need to share medical records, including diagnostic studies, to avoid duplication. Section 133.106 of this title (relating to Fair and Reasonable Fees for Required Reports and Records) addresses reimbursement for copies of records.

(5) Expectation and Compliance.

(A) All health care providers must encourage injured employees [~~workers~~] to be active participants in their health care treatment regimens and must communicate to the injured employee [~~worker~~] realistic expectations regarding the potential outcome of this treatment regimen as it relates to his/her physical functioning and/or ability to return to work. Therefore, documenting the injured employees' compliance with his/her treatment regimen is important [~~it is important to document the injured worker's compliance with his/her treatment regimen~~] when reporting the progress of his/her recovery.

(B) Health care providers must explain to the injured employee [~~worker~~] in clear terms the extent and severity of the injury and the treatment needed. Health care providers must define the symptomatology that is directly and/or indirectly related to the injury and specify treatment not covered under workers' compensation.

(d) Application Instructions for Involved Parties.

~~[(1) Concepts and Governing Principles.]~~

(1) [~~(A)~~] Health Care Provider. This guideline shall [~~is to~~] be used as a tool by the health care provider to establish the required elements to initiate and continue treatment. If, for example, a health care provider's treatment deviates from this [~~the~~] guideline, documentation of the medical condition that specifically requires treatment outside the guideline parameters would be required to clearly delineate the need for the treatment [~~a clearly delineated rationale for the need for this treatment would be required~~].

(A) [~~(i)~~] This guideline identifies typical treatment based on normal tissue healing responses for the average injured employees [~~workers~~].

(B) [~~(ii)~~] This guideline recognizes that a subset of injured employees will be found to be outside the parameters of this guideline. If a health care provider's treatment deviates from this

guideline, documentation would be required to clearly delineate the need for the treatment. [~~It is expected that a subset of injured workers will be found to be outside the parameters of these guidelines.~~]

(C) [~~(iii)~~] This guideline should be used as a tool which identifies the recommended treatment parameters for treatment of injured employees [~~workers~~] within the workers' compensation system.

(D) [~~(iv)~~] This guideline identifies the need to provide documentation which clearly explains the reason for the treatment, the relatedness to the workers' compensation injury and alternative treatment.

(E) [~~(v)~~] The health care provider is responsible for [~~also becomes aware of the need to~~]educating [~~educate~~] the injured employee [~~worker~~] about [~~of~~] health care treatment appropriate for [~~in~~] the workers' compensation injury (refer to subsections (d)(1)(E) and (e)(2)(C)).

(F) [~~(vi)~~] This guideline recommends timely [~~early~~] return to work of either full or modified job duties based upon the injured employee's [~~worker's~~] functional capacity which includes ability, clinical status, and either full or modified job requirements.

(2) [~~(B)~~] Insurance Carriers. The insurance carrier shall [~~should~~] use this guideline to compare treatment prospectively, concurrently and retrospectively with the predetermined elements contained in this guideline [~~the guides~~].

(A) [~~(i)~~] This document and its parameters serve only as a guideline and shall [~~are~~] not to be used as the sole reason for denial of treatments and services.

(B) [~~(ii)~~] This guideline provides a tool by which to monitor the injured employee's [~~worker's~~] recovery process.

(C) [~~(iii)~~] This guideline serves as a tool to assist the insurance carrier [~~carriers~~] in the medical audit process.

(D) [~~(iv)~~] This guideline is not to be used to direct care toward a specific health care discipline or to a specific type of treatment. The insurance carrier is responsible for providing their [~~It is the responsibility of the insurance carrier to provide~~] specific documentation and rationale if treatment is denied. This rationale may include elements of the guideline. Additional information regarding the rationale for denial of treatment may also be derived from the injured employee's [~~worker's~~]medical records and from the professional opinion of a peer review, if utilized. In addition, this treatment guideline is a part of the screening criteria required by the Texas Department of Insurance to be used by Utilization Review Agents to determine preauthorization and retrospective review for medical necessity. Please refer to Title 28 of the Texas Administrative Code, Subchapter U, 28 TAC §§19.2000 - 19.2021, relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage.

(E) [~~(v)~~] A [~~It is expected that a~~] subset of injured employees [~~workers~~] will be found to be outside the parameters of this guideline. If a health care provider's treatment deviates from this guideline, documentation would be required to clearly delineate the need for the treatment.

(F) The insurance carrier is responsible for performing a focus review of the injury. This focus review shall primarily consist of case management. The focus review must clarify and attempt to reach agreement that the proposed treatment is appropriate as early as possible. Concurrent case management and bill review activities should address and focus on:

(i) adherence to treatment plans;

(ii) clinical progress;

(iii) return to work issues;

(iv) medical necessity;

(v) injured employee compliance with the treatment;

(vi) services provided consistent with treatment plan;

(vii) response to treatment;

(viii) improvement in injured employees' progress;

(ix) recommendations for changes in treatment in situations where there is no compliance, plateau, and/or there is minimal or no progress; and

(x) achievement of goals, improvement sooner than treatment plan indicated.

(3) [~~(C)~~] Medical Review Division. The Medical Review Division shall [~~will~~] use the guideline as a tool for the basis of their administrative review of prospective, concurrent and retrospective treatment. This guideline shall [~~It will~~] also be used as a tool in conducting on-site audits and desk audits for both health care providers and insurance carriers.

(4) [~~(D)~~] Consulting or Peer Review Health Care Provider. This guideline should be used as a reference in advising the Medical Review Division and to determine when the need for an unbiased medical opinion is indicated. The peer reviewer should use his/her clinical expertise in conjunction with the clinical intent of the guideline to address issues.

(5) [~~(E)~~] Injured Employee [~~Worker. It is essential~~] The [~~the~~] injured employee should understand [~~worker understands~~] his/her role in complying with recommended treatment. The recovery [~~and return to work~~] process requires active cooperation of the injured employee [~~worker~~]. The health care provider is responsible for educating the injured employee about health care treatment appropriate to the workers' compensation injury (refer to subsections (d)(1)(A)(v) and (e)(2)(C)).

(6) [~~(F)~~] Employer. [~~It is the responsibility of~~] The [~~the~~] employer shall be responsible for reporting [~~to report~~] the compensable injury in a timely fashion to ensure that there is no delay in the treatment of the compensable injury. The employer should, when appropriate, be responsible for working [~~It is also the responsibility of the employer to work~~] with the insurance carrier and health care providers to ensure that the injured employee [~~worker~~]is afforded the opportunity to return to work in either a modified or full employment capacity as rapidly as possible within the medical limitations of his/her injury.

~~[(2) Application Tables. See Figures (1)-(3) published in the Tables and Graphics Section of this issue of the Texas Register.]~~

~~[(A) Initiation of Treatment.]~~
~~[Figure: 28 TAC §134.1001(d)(2)(A)]~~

~~[(B) Ongoing Treatment.]~~
~~[Figure: 28 TAC §134.1001(d)(2)(B)]~~

~~[(C) Ongoing Treatment (For other parties involved).]~~
~~[Figure: 28 TAC §134.1001(d)(2)(C)]~~

(e) Ground Rules.

(1) Introduction. The Texas Workers' Compensation Commission treatment guidelines are not to be used as fixed treatment protocols. The guidelines reflect services that are reasonable and medically necessary for treatment of spine injuries. The guidelines recognize that a subset of injured employees will be found to be outside the guidelines' parameters. [~~typical courses of intervention. It is acknowledged that, in atypical cases, treatment may fall outside these guidelines.~~] However, [~~those~~]cases exceeding [~~that exceed~~]the guidelines' level of treatment shall [~~will~~] be subject to more careful scrutiny and review and shall [~~will~~] require documentation of the special circumstances justifying that treatment. The guideline should not be seen as prescribing the type, frequency or duration of treatment. Treatment must be based on the injured employee's [~~worker's~~] need and the doctor's professional judgment.

(2) Ground Rules.

(A) Not withstanding any other provision of this section, treatment of a work related injury must be:

(i) adequately documented;

(ii) evaluated for effectiveness and modified based on clinical changes;

(iii) provided in the most appropriate, least intensive setting;

(iv) cost effective;

(v) consistent with this guideline which may include providing [~~or contain~~] a documented clinical rationale for deviation from this guideline;

(vi) objectively measured and demonstrated [~~demonstrate~~] functional gains; and

(vii) consistent in demonstrating ongoing progress in the recovery process by appropriate re-evaluation of the treatment.

(B) Communication between all health care providers involved in treating the injured employee [~~worker~~] must ensure that all previous treatment and diagnostic tests are considered when developing a [~~plan of~~] treatment plan. All reports and records shall [~~should~~] be made available to all health care providers to prevent unnecessary duplication of tests and examinations (refer to [~~as provided~~]in subsection (c)(2) and (3) of this section).

(C) Education [~~Patient education~~] is an essential component in ensuring the injured employees' [~~patient~~] compliance to all treatment. Education is essential for the active cooperation of the injured employee [~~patient~~] in all aspects of health care and as a means to prevent re-injury. The injured employee should understand his/her role in the recovery and return to work processes. The health care provider is responsible for providing education to the injured employee about health care treatment appropriate to the workers' compensation injury (refer to subsections (d)(1)(A)(v) and (e)(2)(C) of this section). [~~It is essential that the patient understand his/her role in the recovery and return to work process.~~]

(D) Outpatient evaluation and therapy is required to meet the definitions/criteria set forth in the current Medical Fee Guideline. Treatment in this area should include activation as early as possible but no later than two weeks after treatment begins unless there is medical justification for delay. Early activation may include but is not limited to bilaterally symmetrical activities such as walking, swimming, bicycling and self-stretching. The activities should be goal directed - either timed intervals or numbered repetitions and may be performed at home or under supervision. Documentation of the injured employee's compliance and substantive and continued improvement over time of treatment should be included in reports already being submitted. This documentation should justify the continuation of therapy. For examples of types of documentation refer to paragraph (3)(C) of this subsection.

(E) Manipulation should be performed for the minimum appropriate duration. Minimum appropriate duration can be defined as that duration of time from the initiation of treatment which will result in continued improvement, and where additional treatment will not further benefit the injured employee. The frequency of such treatment should be consistent with the phase of the injured employee's disease or dysfunctional process as determined by on-going evaluation and management of the injured employee's conditioning. Substantive and continued improvement over time from the treatment should be objectively documented. For examples of objective documentation refer to paragraph (3)(E) of this subsection. Additional treatment or further evaluation may be necessary if repeated efforts to withdraw from treatment results in documented significant deterioration of clinical status and the doctor has taken steps to determine that the patient is not physician/system dependent (i.e. behavioral consultation).

(F) [~~(D)~~] Although preoperative educational programs and chronic pain management programs are not specifically outlined, the intent of this guideline is not to eliminate or prohibit their use. When deemed medically necessary, these programs may be considered appropriate types of intervention to be utilized. Chronic pain management programs may be appropriate for injured employees with chronic pain for which all conventional treatments have failed, surgical and non-surgical, and who are not immediately returning to any conventional treatment. Chronic pain is pain that has lasted without abatement for six months, A primary goal of the chronic pain management program should be the independent self-directed management of chronic pain by the injured employee. Chronic pain management programs should include the following components: usual duration of four to six weeks; identified endpoint which coincides with the determination of Maximum Medical Improvement (MMI); and notification to the injured employee that non-compliance will result in a determination of MMI. The chronic pain management program should also provide coordinated, goal-oriented, interdisciplinary team services to reduce pain, improve functioning, and decrease the dependence on the health care system of persons with chronic pain syndrome. After completion of a full chronic pain management program, re-enrollment or repetition of another full chronic pain management program would not be medically warranted. For additional ground rules on the use of interventional measures for pain, refer to paragraph (2)(R) of this subsection.

(G) TENS (transcutaneous electric nerve stimulation) units and other transcutaneous stimulators should be used for acute pain and usually for no longer than four to six weeks. If stimulators are needed beyond the acute phase, objective documentation should be provided for the continued rental/purchase. For examples of objective documentation refer to paragraph (3)(F) of this subsection.

(H) [~~(E)~~] All parties in the workers' compensation system should work together to ensure that the injured employee [~~worker~~] returns to work at the earliest medically appropriate time. Return-to-work is an important therapeutic approach which benefits the injured employee [~~worker~~]. The health care provider shall [~~should~~]communicate with the injured employee [~~worker,~~] employer and the insurance carrier to coordinate a successful return to work. Return to work planning efforts should commence as early as possible in cases where the injury is severe and the provider expects obstacles in returning the injured employee to the workplace.

(I) [~~(F)~~] The level of service should be the same as the health care provider's usual and customary level of service regardless of the payor system.

(J) [~~(G)~~] Although not the typical course of treatment, there may be circumstances in which the [~~The~~] injured employee [~~worker~~] may move between phases [~~levels~~] of care or utilize interventions in more than one phase [~~level~~] of care simultaneously, depending on clinical indicators.

(K) [~~(H)~~] Treatment durations are cumulative; it may [~~however, it should~~] not always be necessary to use full durations for any given phase [~~level~~] of care.

(L) Rehabilitation programs such as work hardening, work conditioning and outpatient medical rehabilitation are required to meet the definitions/criteria set forth in the current Medical Fee Guideline. Work conditioning and work hardening program goals should be tailored to physical demands required by job specificity. When the injured employee does not have a specific job that he/she is returning to, the goal of these programs should be to restore a reasonable level of physical functioning. Work conditioning programs at the job site or a combination of work conditioning/work hardening and modified duty as part of a progressive return to work program can also be utilized to meet these goals when the employer has these programs in place.

[~~(I) An initial mental health evaluation to determine the injured worker's readiness for the Work Hardening program may be performed prior to entrance into the program. This evaluation is not considered part of the Work Hardening program. Group therapy, provided by a Qualified Mental Health Provider, is considered to be part of the Work Hardening program. Individual therapy (i.e., one-to-one therapy with a Qualified Mental Health Provider) is not considered to be part of the Work Hardening program. Referral for this evaluation must come from the treating doctor.~~]

(M) [~~(J)~~] The highest quality of patient care and clinical outcomes should be the standards by which referrals to intermediate [~~secondary~~] and tertiary care programs are determined. Documentation should be provided by the treating doctor which demonstrates the clinical progress of the injured employee's [~~worker's~~] condition and evidence of the doctor's supervision. With this documentation present, both intermediate [~~secondary~~]and tertiary nonoperative care may be provided sequentially within the same facility or in facilities with linked ownership if self-referral or conflict of interest elements do not exist.

(N) [~~(K)~~] All health care providers treating [~~providing services to~~]an injured employee [~~worker~~] are responsible for substantiating [~~have the responsibility to substantiate~~] in their documentation the level of service for which they request reimbursement. All payors have the responsibility to review all documentation submitted as the basis for the treatment and services provided.

(O) [~~(L)~~] Any new treatment must meet acceptable standards of care (as defined in the Glossary) and may be subject to review by the Texas Workers' Compensation Commission.

(P) [~~(M)~~] Documentation of significant neurological deficit may support early intervention (0 - 6 weeks) of MRI's and CT scans, which would better direct the course of treatment.

(Q) [~~(N)~~] Indications for bone growth stimulators[~~(internal and external) (CPT codes 20974 and 20975)~~] include:

(i) revision spinal fusion;

(ii) history of spinal fusion with prior [~~or~~] delayed union at different level;

(iii) multiple level spinal fusion;

~~*(iv)* use of allograft;~~]

~~*(v)* spondylolisthesis greater than grade two; and ~~]

(iv) [~~(vi)~~] nonassociated high risk problems: e.g. [~~metabolic bone disease,~~] smokers,[~~diabetics, obesity.~~] and pseudoarthroses.

(R) [~~(O)~~] Interventional pain procedures may include spinal cord or peripheral nerve stimulation and/or implantable infusion pumps and [~~CPT codes for these procedures include 64555, 63650, 63655, 63685,~~] 62351, 62360, 62361, 62362, [~~63750,~~] 62350, [~~63780, 64575, and 64590. These procedures~~] are performed to achieve one or more of the following objectives:

(i) to establish a diagnosis by identifying an anatomical source of pain (e.g., nerve sleeve injections and facet injections); [~~lesion specific delivery of medications to damaged nerve roots;~~]

~~*(ii)* release of entrapped nerve roots from scars;~~]

(ii) [~~(iii)~~] to complete therapeutic neurodestructive procedures to an anatomic source of pain identified by an appropriate response to diagnostic injections (e.g., injection of neurolytic substances, cryoneurolysis, and radiofrequency thermocoagulation);

(iii) to deliver specific medications (e.g. steroids and narcotics) to potential sources of pain.

~~*(iv)* establish diagnosis using only diagnostic procedures (e.g., nerve sleeve injections and facet injections)~~]

(S) Spinal injection techniques are interventional pain procedures that can be diagnostic as well as therapeutic and may also facilitate other treatment options such as rehabilitation or manipulation. Interventional pain procedures should be performed methodically based on reproducible clinical examination findings. Consideration should be given to the destructive properties of corticosteroids and care taken in their appropriate use.

(i) Epidural Steroid Injections - Indications for epidural steroid injections include radicular symptoms that prove unresponsive to noninvasive treatments including non-steroidal anti-inflammatories (NSAIDS), appropriate active rehabilitation or manipulation, and/or oral corticosteroids. Epidural injections should be performed under fluoroscopic control. Relief for less than seven to 10 days to the initial injection precludes the need for additional injections. The frequency of injections should be limited to one to three injections spaced minimally seven to 14 days apart as determined by clinical response and not to exceed six injections in a 12 month period. Repeat series of injections after the initial injection series would be precluded if initial series did not provide at least one month of good relief.

(ii) Zygapophyseal (Facet) and Costovertebral Joint Injections - Indications for intra-articular injections are limited to axial and referred pain in patients who are neurologically intact with pain for at least four weeks unresponsive to noninvasive treatments including NSAIDS, appropriate active rehabilitation or manipulation and/or oral corticosteroids. These injections must be performed under fluoroscopic control. Relief for less than seven to 10 days to the initial injection precludes the need for additional injections. Furthermore, injections should be limited to three to four joints not to exceed three injections in a 12 month period.

(iii) Sacroiliac Joint (SI) Injections - Indications for SI injections are a strong clinical suspicion of SI joint dysfunction in a patient who has experienced pain for at least four weeks and failed to improve with noninvasive treatments including NSAIDS, appropriate active rehabilitation or manipulation and/or oral corticosteroids. SI injections must be performed under fluoroscopic control. Relief for less than seven to 10 days to the initial inejctions precludes the need for additional injections. The frequency of injections should be limited to one to three injections spaced minimally seven to 14 days apart as determined by clinical response and not to exceed four injections in a 12 month period. Repeat series of injections after the initial injection series would be precluded if initial series did not provide at least one month of good relief.

(iv) Selective Diagnostic Nerve Root Blocks - Indications for selective nerve root blocks exist in that patient in whom clinical findings of nerve root irritation and radiculopathy persists with negative or equivocal imaging studies and in spite of appropriate treatment including NSAIDS, appropriate active rehabilitation or manipulation, and/or oral corticosteroids. These diagnostic blocks must be performed under fluoroscopic control. Relief of less than seven to 10 days to initial injection precludes the need for additional injections at the same levels. Frequency of injections should be limited to three injections spaced minimally 14 days apart as determined by clinical response and should not exceed six injections in a 12 month period. Levels injected should not exceed three per given spinal segment-cervical, thoracic or lumbar.

(v) Medial Branch and Dorsal Ramus Blocks - Indications for medial branch and dorsal ramus blocks exists in those patients with at least four weeks of axial or referred pain that has persisted in spite of appropriate treatment including NSAIDS, appropriate active rehabilitation or manipulation, and/or oral corticosteroids. These diagnostic blocks must be performed under fluoroscopic control. Repeat blockade should only be performed for confirmation of equivocal results in patients for whom ablative block is to be considered and should not exceed two additional injections in a 12 month period.

(vi) Ablative Dorsal Median Branch Blocks (radiofrequency thermocoagulation, cryoneurolysis, chemical neurolysis) - Indications for these techniques exist in that patient with at least eight weeks of axial or referred pain that has a confirmed facet pain source limited to no more than two joints by prior diagnostic facet or select dorsal median branch blockade. Repeat ablation may be performed for recurrent pain not sooner than four months after initial ablative blockade and should not exceed two times in a 12 month period.

(T) Trigger point injections - Indications include reproducible and palpable paraspinal muscle spasticity of at least two weeks duration nonresponsive to appropriate treatment including NSAIDS and rehabilitation or manipulation. Less than five days of relief with initial injection would preclude additional injections. Frequency of injections should be limited to three injection sessions spaced minimally seven days apart and should not exceed four injection sessions in a 12 month period. No more than four injections should be given at any session. Failure to obtain at least three months of improvement with a set of three injection sessions would preclude additional injections.

(U) Acupuncture - Acupuncture when indicated may be used for acute musculoskeletal pain and usually for no longer than four to six weeks. If treatment is needed beyond the acute phase, objective documentation should be provided for the continued treatment.

(V) [~~(P)~~] Preauthorization of any treatments or services will be as required in the Commission's preauthorization rule.

(W) [~~(Q)~~] When it becomes necessary for an injured employee [~~worker~~] to travel in order to obtain appropriate and necessary medical care for a compensable injury, reimbursement for travel expenses is governed by §134.6 of this title.

(X) [~~(R)~~] The CPT codes in the current Medical Fee Guideline should be used. The CPT codes listed should not be used until they are adopted into a current Medical Fee Guideline.

(Y) When the injured employee displays signs and symptoms which may require further evaluation by a Qualified Mental Health Provider, refer to §134.1000 of this title (relating to the Mental Health Treatment Guideline) for parameters regarding documentation, evaluation and treatment.

(3) General Documentation Requirements.

(A) The health care provider's documentation is vital as an information source regarding the injured employee's [~~worker's~~] injury and treatment and [~~. It~~]also provides information which impacts income benefits. For these reasons, many of the Commission's rules have set time requirements for submission of required reports. For more information, refer to Chapter 133, Subchapter B of this title (relating to Required Reports). [~~For example, the TWCC 61 could be the first report submitted which informs the insurance carrier of the injury. The TWCC 64 provides medical information regarding the injured worker's clinical progress and the need for continuation of any income benefits. The TWCC 69 provides the determination of MMI and an impairment rating which may result in a change in income benefits.~~]

(B) Documentation shall [~~should~~] be provided by the health care provider to determine the phase [~~level~~] of care to be provided and the necessity for that care. The elements of that documentation may include:

(i) a [~~A~~]description of the injury, including the events surrounding that injury and the extent and severity of that injury;

(ii) a [~~A~~] description of any pre-existing condition(s), complicating conditions, and/or any non-related conditions;

(iii) a [~~A plan of~~] treatment plan, including proposed methods of treatment, expected outcomes, and probable duration of treatment;

(iv) updates [~~Updates~~] to the [~~plan of~~] treatment plan as needed, including the clinical progress of the injured employee [~~worker,~~] and any revisions needed to the treatment plan based on [~~in light~~] of the injured employee's [~~worker's~~] response to treatment;

(v) education [~~Education/~~]information provided to the injured employee [~~worker~~] regarding his or her injury and [~~plan of~~] treatment plan, and the injured employee's [~~worker's~~] compliance with this [~~plan of~~] treatment plan; and

(vi) documentation [~~Documentation~~] substantiating the need for deviation from the guideline, if necessary.

(C) Documentation of acceptable outpatient evaluation and therapies should be objective and illustrate compliance and substantive and continued improvement over time. Examples of this documentation may include but are not limited to :

(i) patient diaries documenting home program;

(ii) description of patient's capabilities and progress made;

(iii) notes describing quantified changes in pain behavior using tools such as pain drawings;

(iv) notes describing the patient's demonstrated independent performance of provider instructed exercise;

(v) notes describing patient's exercise such as "patient is walking 45 minutes";

(vi) notes indicating increased ability in activities of daily living;

(vii) notes indicating increase in walking distance;

(viii) notes indicating increase in sitting time tolerance;

(ix) notes indicating increase in standing time tolerance;

(x) neck disability index results; and

(xi) back disability index results.

(D) Documentation for rehabilitation programs such as work conditioning, work hardening or outpatient medical rehabilitation should show objective substantive and continued improvement over time that correlates to the job description the injured employee will most likely enter upon completion of the program. The examples listed in paragraph (3)(C) of this subsection may also be used to appropriately document progress made in rehabilitation programs.

(E) Documentation for manipulation should show objective/quantified substantive and continued measures of improvement over time. The examples listed in paragraph (3)(C) of this subsection may be used to appropriately document progress.

(F) Documentation for the continued use of TENS units and other transcutaneous stimulators beyond four to six weeks should show objective/quantified measures of substantive and continued improvement over time which may include but are not limited to:

(i) decreased use of medication;

(ii) increased function due to reduction in pain; and

(iii) return to work.

(G) [~~(C)~~] Permanent impairment for compensable injuries in workers' compensation shall [~~should~~]be limited to these injuries and illnesses for which doctors [~~physicians~~]are able to demonstrate objective findings.

(H) [~~(D)~~] The need for emergency treatment must be based on the doctor's professional judgment. This documentation must provide a clear explanation of the nature of the emergency, the injured employee's [~~worker's~~]medical condition, complications which could occur as well as any irreversible conditions which occurred or could occur as a result of the emergency [~~this event~~].

(4) Documentation Requirements for Unrelated or Intercurrent Illness. Situations may arise where certain medical conditions need to be delineated or clarified prior to intervention. Treatment administered to other body areas (not a part of the original injury) or for a pre-existing medical condition(s) must be identified and the relation of this treatment to the compensable injury must be documented by the health care provider. If this treatment [~~it~~] appears [~~that this treatment is~~] not to be related to the compensable injury, then the health care provider should inform the injured employee that this treatment may not be covered by the insurance carrier [~~the injured worker should be informed by the health care provider that this treatment may not be covered by the insurance carrier~~]. The health care provider should clearly document the [~~The~~] rationale for such treatment and its relation to the compensable injury [~~should also be clearly documented for the insurance carrier by the health care provider.~~]

(f) Diagnostic Procedures.

(1) Introduction. This subsection provides an average timeline in which to utilize certain listed diagnostic studies. The actual need for the diagnostic studies will be dependent on both the amount of time that has passed since the date of injury and on the injured employee's [~~worker's~~] documented clinical condition. If the clinical condition of the injured employee [~~worker~~] is more severe, certain tests may be required sooner than is proposed in this guideline.

(2) List of Diagnostic Interventions. The following subdivisions of this paragraph comprise a list of diagnostic interventions:

(A)-(I) (No change.)

(J) [~~discography +/- CT scan;~~]

[~~(K)~~] radionucleotide bone scan:

(i) nucleotide;

(ii) dual photon; or

(iii) P.E.T.;

(K) [~~(L)~~] EMG/evoked potential;

(L) [~~(M)~~] diagnostic selective nerve root injection - [~~must be~~] done under fluoroscopy control; (refer to subsection (e)(2)(S)(iv) of this section);

(M) [~~(N)~~] diagnostic facet injection - done under fluoroscopy control both diagnostic and therapeutic (refer to subsection (e)(2)(S)(ii) of this section);

(N) discography - discography involves the injection of a water-soluble imaging material directly into the nucleus pulposus of the disc. Information is then recorded about the amount of dye accepted, the pressure necessary to inject the material, the configuration of the opaque material, and the reproduction of the patient's pain. Discography is useful in select situations.

[~~(O) physical capacity evaluation;~~]

(O) [~~(P)~~] functional capacity evaluation; or

(P) [~~(Q)~~] mental health evaluation.

(3) Time Recommendations for Listed Diagnostic Interventions.

(A) Recommended diagnostics [~~treatment~~] at zero to six weeks include [~~includes~~] the diagnostic interventions listed in paragraph (2)(A),(B), and (C) of this subsection.

(B) Recommended diagnostics [~~treatment~~] at six weeks to four months includes the diagnostic interventions listed in paragraph (2)(D) - (L) [~~(I) and (K) ,- (M)~~] of this subsection.

(C) Recommended diagnostics [~~treatment~~]at greater than four months includes the diagnostic interventions listed in paragraph (2)(M) [~~(J) and (N)~~] of this subsection.

(D) Discography should not be performed before six months from date of injury and only after appropriate imaging studies such as an MRI or CT/myelogram has been performed with questionable/suggestive/abnormal findings. Discography should

not be the sole determining factor or justification for a surgical intervention. A positive discogram correlates the reproduction of the patient's pain with an imaging study and a control. The following indicators (which also appear in chart 6 of the surgical algorithms) must occur for discography to be appropriate:

(i) the patient has had unremitting lower back pain resistant to conservative care for more than six months; and

(ii) significant psychosocial issues are not dominant or have been addressed; and

(iii) suspect degenerated discs and one normal disc by MRI are injected; and

(iv) results of appropriately and carefully performed provocative and imaging tests are combined

(E) [~~(D)~~] The diagnostic interventions listed in paragraph (2)(O) - (P) [~~(Q)~~] of this subsection may occur at any time after the initial date of injury. Once the injured employee [~~worker~~] has sufficiently recovered, a[~~Physical Capacity Evaluation and/or~~] Functional Capacity Evaluation is usually performed to determine whether or not the injured employee [~~worker~~] is considered a candidate for a work hardening or work conditioning program. These tests are usually performed just prior to entry into the program and at the end of the program to determine the injured employee's [~~worker's~~] level of physical ability and his capability to return to work.

(g) Phases [~~Levels~~] of Nonoperative Care.

(1) Introduction to Nonoperative Treatment Tables. The treatments, set out in the following tables, represent treatment that is reasonable and medically necessary for a given period of time according to the diagnosis(es). The "Treatment Interventions" sections of the Treatment Tables are in alphabetical order and do not infer numerical sequence. There will be some injured employees who require less treatment, and other injured employees who require more treatment than is outlined. This document serves as a guideline and should not be used as the sole reason for denial or requirement of treatment. The provision of specific services to an injured employee is dependent on the injured employee's diagnosis, and response to treatment. [~~Introduction. The following subsection defines the criteria for referral to primary, secondary and tertiary levels of care that are reasonable and necessary for care to the spine. Primary, secondary and tertiary levels of nonoperative care are illustrated in Tables I, II and III in paragraph (6) of this subsection. The tables define duration and specific components of each level of care. The clinical condition of the injured worker, as documented by the treating doctor, will be the determining factor for placing the injured worker in the most appropriate level of care. The injured worker may move between these levels of care dependent upon his condition and the treatment preceding the move between levels. The duration of treatment at any one level of care may be less than or greater than the recommended duration dependent upon the documented condition of the injured worker. If the treatment provided exceeds the recommended duration at that level of care, additional documentation needs to be provided regarding the need for extended care. Treatment durations are considered cumulative and it should not always be necessary to use full durations for any given level of care (see subsection (e)(2)(G)of this section).~~]

(2) Initial Phase [~~Primary Level~~] of Care. This phase [~~level~~] of care is generally considered to be appropriate for injured employees [~~workers~~] immediately following the compensable injury; however, the injured employee [~~worker~~] in this phase [~~level~~] of care may also be an early postoperative patient or may be experiencing an acute exacerbation of his/her chronic condition [~~back pain~~]. Since [~~bedrest and~~] partial or total cessation of work over a brief period of time [~~(i.e., two to three days maximum)~~] is also considered to be part of the initial phase [~~primary level~~] of care, further treatment by a health care provider may not be considered necessary at this phase [~~level~~] of care. Little or no deconditioning has occurred due to the injury, immobilization or decreased activity. The goals [~~goal~~] for this phase [~~level~~] of care are [~~is~~] to prevent disease, alleviate or minimize the effects of the illness or injury and to maintain function [~~symptom control to facilitate rapid recovery and return to work before deconditioning or psychosocial barriers occur. The usual duration for this level of care is eight weeks~~].

(3) Intermediate Phase [~~Secondary Level~~] of Care. This phase [~~level~~] of care is [~~the first stage of rehabilitation~~] for those injured employees [~~workers~~] who have not returned to productivity after [~~through~~] the normal healing process. This phase of care [~~It~~] is designed to facilitate return to productivity, including return to work in either full or modified duty, before the onset of a chronic condition [~~disability~~]. This phase of care may also be indicated for the injured employee whose physical capacity to work still does not meet the job requirements for heavy physical labor after adequate treatment, thereby causing an inability to return to full duty. It is individualized, time limited and of limited intensity. The injured employee [~~worker~~] has a history of a limited-to-good response to early primary treatment with persistent symptoms limiting activities of daily living. The objective physical examination demonstrates findings suggestive of early deconditioning including loss of range of motion and/or strength with limitation of activities of daily living. Evidence of mental health or psychosocial barriers may be present which impede the injured employee's [~~worker's~~]clinical progress. [~~Duration of this level of care is generally up to eight weeks. In addition to the normative duration listed, an additional two weeks is added to secondary level for less intensive care if necessary at the termination of the tertiary level of care. Documentation of necessity must be included with the request for the additional two weeks.~~]

(4) Tertiary Phase [~~Level~~] of Care. This phase [~~level~~] of care is interdisciplinary, individualized, coordinated and intensive. [~~,~~] It is designed for the injured employee [~~worker~~] who demonstrates physical and psychological changes consistent with a chronic condition [~~disability~~]. [~~There is a documented history of persistent failure to respond to nonoperative or operative treatment which surpasses the usual healing period of four to six months post-injury or post-surgery or special cases with severe mental health issues lasting more than two months without response to primary or secondary treatment.~~] Psychosocial issues such as substance abuse, affective disorders, and other psychological disorders may be present. There is a documented inhibition of physical functioning evidenced by pain sensitivity, and nonorganic signs such as fear which produce a physical inhibition or limited response to reactivation treatment. This phase [~~level~~] of care may also be indicated for the injured employee [~~worker~~] whose physical capacity to work still does not meet the job requirements for heavy physical labor after adequate treatment, thereby causing an inability to return to full duty. This situation would be evidenced by an excessive transitional period of light duty or significant episodes of lost work time due to the need for continued medical treatment. This phase [~~level~~] of care is also indicated for those injured employees [~~workers~~] who cannot tolerate either initial [~~primary~~]or intermediate phases [~~secondary levels~~] of care. The usual duration for this phase [~~level~~] of care is generally up to six weeks.

(5) Criteria to Distinguish between Intermediate [~~Secondary~~] and Tertiary Phases [~~Level~~] of Care. Many factors may determine the choice between intermediate [~~secondary~~] and tertiary phases [~~levels~~] of care. In general, if lower cost intermediate

[secondary] treatment can be effective, this phase [level] of care is preferred over the more expensive tertiary care. However, if the documented condition of the injured employee indicates [worker is indicative of] the need for more intensive treatment, the tertiary phase [level] of care may be more appropriate. Key factors in determining the need for intermediate [secondary] versus tertiary care include:

(A) (No change.)

(B) the presence of psychosocial barriers to recovery such as but not limited to depression, substance abuse, personality disorder, etc., and the severity of these barriers;

(C)-(F) (No change.)

(6) Post-tertiary treatment. Injured employees are entitled to the reasonable and necessary medical benefits for the duration of the injury. In some cases injured employees will require treatment after they have reached MMI or after they have completed the tertiary phase of treatment. Treatment should be provided to control pain or other symptomology, maintain function and/or to help the injured employee remain at work. Treatment provided post MMI or after the tertiary phase of care is typically aimed towards one or more of these three goals. Interventions for these injured employee are generally provided at a lower frequency than in the three phases of care outlined in the treatment tables. Examples of interventions that might be utilized include office visits, manipulations, home exercise, injections, and medications. Preauthorization is applicable to any services listed in the preauthorization rule. Other services are subject to retrospective bill review for medically reasonable and necessary treatment and/or payment amount. Health care providers who provide services to injured employees after the tertiary phase of care or after MMI, who are not paid for their services may apply to Commission's Medical Dispute Resolution section, for resolution of the issue of medical necessity or bill payment amount. To receive payment for services, a treatment must be related to the compensable injury and be reasonable and necessary treatment for that injury. Health care providers are responsible for appropriate utilization of medical services. Health care providers may be sanctioned or removed from the Approved Doctor List for over utilization of health care services. Insurance carriers must review treatments in accordance with the standards set forth by the Texas Department of Insurance Utilization Review Rules. An insurance carrier operating outside the parameters of these rules may be subject to regulatory sanctions and/or criminal charges by the Texas Department of Insurance. An insurance carrier who unreasonably denies medical benefits may be subject to sanctions by the Texas Workers' Compensation Commission.

(7) [(6)] Phase [Level] of Care Tables. See Figures in subparagraphs (A)-(D) of this paragraph [4 - 7 published in the Tables and Graphics Section in this issue of the Texas Register.]

(A) Table I. Initial Phase of Care. [Levels of Care Tables.]
Figure: 28 TAC §134.1001(g)(7)[(6)](A).

(B) Table II. Intermediate Phase of Care. [Table II. Secondary Level of Care].
Figure: 28 TAC §134.1001(g)(7)[(6)](B)

(C) Table III. Tertiary [Level] Phase of Care.
Figure: 28 TAC §134.1001(g)(7)[(6)](C).

(D) Table IV. Surgical Intervention.
Figure: 28 TAC §134.1001(g)(7)[(6)](D).

(h) Assessments/Evaluations

(1) Interdisciplinary Assessment. In certain cases involving either surgical or nonoperative treatment, an interdisciplinary assessment may be needed. This assessment may include:

(A) Sequelae of Injury. Injuries may produce a variety of unanticipated nonoperative or postoperative sequelae, including problems with other joints/regions due to deconditioning, chronic or progressive neurological conditions, urological problems, or a variety of mental health disturbances. Any or all of these may result in the need for an interdisciplinary assessment to determine what treatment options are needed to bring the injured employee [worker] to the highest functional level.

(B) Intercurrent Illness. Injured employees [workers] suffering from a variety of intercurrent illnesses (e.g., hypertension, cardiac disease, diabetes, etc.) may require medical management beyond the scope of the treating doctor. An interdisciplinary assessment may be needed to determine the treatment options required to bring the injured employee [worker] to the highest functional level, given the limitations of the intercurrent illness. Treatment for the intercurrent illness may not be related to the compensable injury and therefore, may not be the responsibility of the workers' compensation insurance carrier.

(C) Risk Factors for Complications. Some injured employees [workers] may have risk factors in their personal or family history which may affect the delivery of care. In particular, injured employees [workers] expecting to undergo surgery or to undergo an exercise program may demonstrate a variety of cardiovascular risk factors necessitating additional evaluations and modification to the treatment plan.

(2) [Physical Capacity and]Functional Capacity Evaluations [Assessments]. This paragraph specifically discusses the issues of [physical and] functional capacity evaluations [assessments]. These measurements have been used to monitor the injured employee's [workers's] clinical progress; to guide the doctors and/or therapists in determining an exercise program and to provide objective data to determine a permanent physical impairment.

(A) Physical Examination vs. Human Performance Measurement: A physical examination usually consists of a qualitative estimate of the injured employee's [worker's] physical or functional ability. A human performance measurement, by contrast, involves the use of accurate devices and specific skills to quantitatively determine the performance parameters that provide an objective measurement of the injured employee's [worker's] ability as it relates to the compensable injury.

(B) (No change.)

[(C) A physical capacity evaluation of the injured area may include the following:]

[(i) range of motion: quantitative measurements (using appropriate devices) of the injured joint or region (i.e., knee, shoulder, lumbar spine, cervical spine, etc.); and]

[(ii) strength/endurance: quantitative measures of the injured area or region using accurate devices (isometric, isoinertial and/or isokinetic devices in one or more planes), with comparison to contralateral side and/or normative database.]

(C) [(D)] A functional capacity evaluation of the whole person or multiple areas of the body may include the following:

(i) isometric lifting: NIOSH standard leg lift, torso lift, arm lift or extremity isometric test using measurement device;

(ii) isokinetic lifting: controlled speed floor-to-knuckle, knuckle-to-shoulder lifts using measurement devices and standardized protocols;

(iii) isoinertial lifting: standardized free weight lifting tests;

(iv) activities of daily living tests: standardized tests (but often observational) of generic functional tasks (i.e. pushing, pulling, kneeling, squatting, carrying, climbing, etc.)

(v) hand function tests: measurement of fine/gross motor coordination, grip strength, pinch strength, manipulation tests, etc., using measurement devices;

(vi) submaximal cardiovascular endurance tests: measurement of aerobic capacity using bicycle or treadmill; and

(vii) static positional tolerance: observational for tolerance of sitting or standing tolerance.

(3) Appropriate and Inappropriate Testing.

(A) Evaluations Appropriate to Phase [~~Level~~] of Care. The actual need for diagnostic studies is dependent on both the amount of time that has passed since the date of injury and on the injured employee's [~~worker's~~] documented clinical condition. To determine the level of testing appropriate for the injured employee [~~worker~~], please refer to subsection (f) (relating to Diagnostic Procedures) of this section.

(B) Inappropriate Testing. Certain tests and procedures are inappropriate for the assessment of work-related injuries. Some examples include tests performed only to assess the injured employees' [~~workers'~~] efforts, physical capacity evaluations [~~assessments~~] for a joint or body region not related to the compensable injury or invalid or scientifically unjustifiable techniques.

(i) Treatment Algorithms. Paragraphs (1) - (7) of this subsection present commonly pursued courses of treatment for spinal injuries depending on presenting conditions and associated factors. Algorithms are provided for progressive decisions relating to treatment approaches as well as commonly recognized treatment procedures. The treatment algorithms presented in this guideline offer greater potential for agreement between health care providers and payors on medical utilization for specific conditions than use of ICD-9 codes alone. Health care providers who pursue treatment at variance with the guideline are subject to greater documentation requirements as provided in subsection (e)(4) of this section.

(1) Surgical Treatment Code Legend.
Figure: 28 TAC §134.1001(i)(1).

(2) Initial Approach to Treatment of Spinal Injury Chart 1.
Figure: 28 TAC §134.1001(i)(2).

(3) Fracture and/or Dislocation Chart 2.
Figure: 28 TAC §134.1001(i)(3).

(4) Soft Tissue Injury Chart 3.
Figure: 28 TAC §134.1001(i)(4).

(5) Peri-Operative Algorithm Chart 4.
Figure: 28 TAC §134.1001(i)(5).

(6) Surgical Treatment Chart 5.
Figure: 28 TAC §134.1001(i)(6).

(A) Surgical Treatment Subchart 5A.
Figure: 28 TAC §134.1001(i)(6)(A).

(B) Surgical Treatment Subchart 5B.
Figure: 28 TAC §134.1001(i)(6)(B).

(C) Surgical Treatment Subchart 5C.
Figure: 28 TAC §134.1001(i)(6)(C).

(7) Treatment Continuation Chart 6.
Figure: 28 TAC §134.1001(i)(7).

(j) Glossary.

(1) Acceptable Standards of Care - outlines some of the types of tests and treatments which are generally accepted by the professional organizations.

(2) [~~(1)~~]Active Care vs. Passive Care.

(A) Active care - modes of treatment or care requiring that the injured employee [~~worker~~] participate in and be responsible for the phase [~~level~~] of care received.

(B) Passive care - modes of treatment or care which do not require the injured employee [~~worker~~] to participate in his/her care; i.e., the care is "done to" or "applied to" the injured employee [~~worker~~] (e.g., hot packs or cold packs)

(3) Acute - medical condition having rapid onset, severe symptoms, and usually a short course.

(4) Aggravation - an act or circumstance that intensifies or makes worse a pre-existing condition.

(5) Algorithm - a suggested step-by-step procedural pathway for solving a problem or accomplishing some end.

(6) Assessment/Evaluation -the act or process of inspecting or testing for evidence of injury, disease or abnormality.

(7) Chronic - medical condition with recurrent symptoms of long duration

(8) [~~(2)~~] Chronic Pain Management - a program which provides coordinated, goal-oriented, interdisciplinary team services to reduce pain, improve functioning, and decrease the dependence on the health care system of persons with chronic pain syndrome.

(9) Compensable Injury - is defined as an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.

(10) [~~(3)~~] Clinical Plateau - a period of time of relative stability in which the injured employee [~~worker~~] displays minimal or minor changes in his/her condition.

(11) [~~(4)~~] Clinical Progress vs. Lack of Clinical Progress.

(A) Clinical progress - documented objective improvement [~~change~~] in the condition of the injured employee [~~worker,~~] in response to the injured employee's [~~worker's~~] current treatment program.

(B) Lack of clinical progress - documented objective absence of change in the condition of the injured employee [~~worker~~] over a period of time of no less than one month, requiring re-evaluation of the injured employee's [~~worker's~~] condition and re-evaluation of the current treatment program.

(12) [~~(5)~~] Consulting Doctor - a doctor who provides an opinion or advice regarding the evaluation and/or management of a specific problem, as requested by the treating doctor, the Commission, or the insurance carrier. A consulting doctor may only initiate diagnostic and/or therapeutic services with approval from the treating

doctor. (See the definition of referral doctor in paragraph 44 of this subsection).

(13) Decompensation - the inability of the body to maintain adequate functioning in the presence of an injured, abnormal, or nonfunctioning body system.

(14) Diagnosis - the art or act of identifying a disease or injury from evaluation of its signs and symptoms

(15) Diagnostic Module - a standard which establishes normal parameters or boundaries of time within which to perform studies to assist in identifying a disease, injury or abnormality.

(16) Diagnostic Test - objective studies performed to assist in identifying a disease, injury, or abnormality.

(17) [~~(6)~~] Doctor - a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(18) Exacerbation - an increase in the seriousness of a previously diagnosed disease or disorder as marked by greater intensity in the signs or symptoms of the patient being treated.

(19) Examination - the act or process of inspecting or testing for evidence of disease, injury, or abnormality.

(20) First - preceding all others in time.

(21) First Doctor - the initial doctor who evaluates and treats the injured employee, and who may or may not ultimately become the treating doctor.

(22) Focus Review - to critically examine the prospective, concurrent, and retrospective care received by the injured employee as related to the compensable injury.

(23) Frequency of Intervention - the number of occurrences in a specified time in which the health care provider acts to treat the injured employee.

(24) Functional Capacity Evaluation - a battery of tests administered and evaluated to determine the injured employee's ability to perform tasks related to both his or her daily activities and his or her job performance. This evaluation consists of the following elements:

(A) a physical examination and neurological evaluation which includes an assessment of the physical appearance of the injured employee, flexibility of the extremity joint or spinal region, posture and deformities, vascular integrity, the presence or absence of sensory deficit, muscle strength and reflex symmetry:

(B) a physical capacity evaluation which includes quantitative measurement of range of motion and muscular strength and endurance; and

(C) a dynamic functional abilities test which includes activities of daily living, hand function tests, cardiovascular endurance tests, and static/dynamic positional tolerance.

(25) Health Care - all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;

(B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;

(C) psychological services prescribed by a doctor;

(D) the services of a hospital or other health care facility;

(E) prescription drugs, medicines, or other remedy; and

(F) a medical or surgical supply, appliance, brace, artificial member or prosthesis, including training in the use of the appliance, brace, member or prosthesis.

(26) [~~(7)~~] Health Care Facility - means a hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(27) [~~(8)~~] Health Care Practitioner.

(A) an individual who is licensed to provide or render and provides or renders health care; or

(B) a nonlicensed individual who provides or renders health care under the direction or supervision of a doctor.

(28) [~~(9)~~] Health Care Provider - a health care facility or health care practitioner

(29) [~~(10)~~] Impairment - any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent.

(30) Initial Phase of Care - this phase of care is generally considered to be appropriate for injured employees immediately following the compensable injury; however, the injured employee in this phase of care may also be an early postoperative patient or may be experiencing an acute exacerbation of his or her chronic condition. Since partial or total cessation of work over a brief period of time is also considered to be part of the initial phase of care, further treatment by a health care provider may not be considered necessary at this phase of care. Little or no deconditioning has occurred due to the injury, immobilization or decreased activity. Duration of this phase of care is 0-8 weeks. (The goals are to prevent disease, alleviate or minimize the effects of the illness or injury and to maintain function.)

(31) [~~(11)~~] Interdisciplinary Programs - programs in which the delivery of services is provided by more than one type of health care service (e.g., occupational therapy, physical therapy, counseling services, medical services) and in which there is [~~Examples of~~] a coordination between the disciplines regarding the care plan and the delivery of care to the injured employee. This [~~this~~] type of program includes [~~include~~] work hardening, outpatient [~~medical~~] rehabilitation, and chronic pain management.

(32) Intermediate Phase of Care - This phase of care is for those injured employees who have not returned to productivity after the normal healing process. This phase of care is designed to facilitate return to productivity, including return to work in either full or modified duty, before the onset of a chronic condition. This phase of care may also be indicated for the injured employee whose physical capacity to work still does not meet the job requirements for heavy physical labor after adequate treatment, thereby causing an inability to return to full duty. It is individualized, time limited and of limited intensity. The injured employee has a history of a limited-to-good response to early initial treatment with persistent symptoms limiting activities of daily living. The objective physical examination

demonstrates findings suggestive of early deconditioning including loss of range of motion and/or strength with limitation of activities of daily living. Evidence of mental health or psychosocial barriers may be present which impede the injured employee's clinical progress. Duration of this phase of care is 0-8 weeks.

(33) Intermediate Treatment - refer to paragraph (32) of the subsection regarding intermediate phase of care.

(34) [~~(12)~~] Intervention - the act or fact of interfering with a condition to modify it or with a process to change its course

~~[(13) Level of service - refers to primary, secondary, or tertiary care.]~~

(35) [~~(14)~~] Maximum Medical Improvement (MMI) - the earlier of the following [~~two~~] items:

(A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated; [~~or~~]

(B) the expiration of 104 weeks from the date on which income benefits begin to accrue or [~~.~~]

(C) the date determined as provided by §408.104 of the Texas Labor Code.

(36) Medical Necessity - the determination that the tests or treatment provided is required based on the presenting signs and symptoms.

(37) Module - a standard or unit of measurement

(38) Objective Findings - signs, or test results that can be measured or quantified or are otherwise perceptible to persons other than the affected individual. A medical finding of impairment resulting from a compensable injury, based on competent medical evidence, that is independently confirmable by a doctor, including a designated doctor, without reliance on the subjective symptoms perceived by the employee.

(39) [~~(15)~~] Outpatient Medical Rehabilitation - a program of coordinated and integrated services, evaluation, and/or treatment with emphasis on improving the functional levels of the persons served. The program is interdisciplinary in nature and is applicable to those persons who have severe functional limitations of recent onset or recent regression or progression or those persons who have not had prior exposure to rehabilitation. Services may be directed toward the development and/or maintenance of the optimal level of functioning and community integration of the persons served.

(40) Phases of Care - the stages in the treatment of an injury or illness (initial, intermediate, and tertiary phases of care).

(41) Proper Clinical Documentation - written records which meet the requirements outlined by statute and rule and which convey the following information to the required parties:

(A) a description of the injury, including the extent, severity and events surrounding that injury;

(B) a description of any pre-existing, complicating and/or any non-related conditions;

(C) a treatment plan, including proposed method, frequency, and probable duration of treatment, with expected outcomes;

(D) updates to the treatment plan as needed, including the clinical progress of the injured employee, and any revisions needed to the treatment plan in light of the injured employee's response to treatment;

(E) education/information provided to the injured employee regarding his or her injury and treatment plan, and the injured employee's compliance with this treatment plan; and

(F) the need for deviation from the guideline, if necessary.

(42) Reason for Denial - refer to paragraph (45) of this subsection on screening criteria.

(43) Referral - the process of directing or redirecting a medical case or a patient to an appropriate specialist or agency for definitive treatment.

(44) [~~(16)~~] Referral Doctor - a consulting doctor who initiates health care treatments at the request or with the consent of the treating doctor.

(45) Screening Criteria - a set of established elements or boundaries beyond which testing or treatment may be denied.

(46) [~~(17)~~] Self-referral - the direction of a patient to another doctor, institution or facility whereby the referring doctor has a financial or conflict of interest element.

(47) [~~(18)~~] Significant Neurological Deficit - signs of sensory impairment, progressive numbness, or [~~rapidly progressing symptoms of~~] increased physiological impairment such as severe weakness, bowel or bladder dysfunction directly related to the spinal injury; [~~, or severe sensory impairment.~~]

(48) Single Point of Contact - one person whom the doctor/health care provider(s) may contact for all questions regarding a specific injured employee.

(49) [~~(19)~~] Sprain - an injury to a ligament

(A) Mild (Grade 1) - only a few fibers are torn; ligament is mostly intact and the joint is stable;

(B) Moderate (Grade 2) - more fibers are torn, resulting in some instability with abnormal joint motion and some functional loss;

(C) Severe (Grade 3) - ligaments are completely disrupted and instability may be severe (synonymous with marked).

(50) Standard - established by authority, custom, or general consent as a model or example; the generally accepted norm for quality and quantity.

(51) Static - characterized by a lack of movement or change.

(52) [~~(20)~~] Strain - an injury to a muscle and/or tendon.

(A) Mild (Grade 1) - only a few fibers are torn; muscle/tendon unit is mostly intact and functional;

(B) Moderate (Grade 2) - more muscle fibers are torn resulting in muscle pain with contraction;

(C) Severe (Grade 3) - muscle fibers or tendons are completely disrupted, extreme pain and loss of use of muscle.

(53) Subacute - medical condition between acute and chronic but with some acute features.

(54) Subjective Complaints - report of symptoms, perceivable only by the injured employee, relating to the injury and which cannot be independently verified or confirmed by recognized laboratory or diagnostic tests or observable by physical examination.

(55) Tertiary Phase of Care - this phase of care is interdisciplinary, individualized, coordinated, and intensive. It is designed for the injured employee who demonstrates physical and psychological changes consistent with a chronic condition disability. In general, differentiation from intermediate treatment includes medical direction, intensity of services, severity of injury, individualized programmatic protocols with integration of physician, mental health, and disability or pain management services and specificity of physical/psychosocial assessment. This phase includes a documented history of persistent failure to respond to nonoperative or operative treatment which surpasses the usual healing period for that injury. Psychosocial issues such as substance abuse, affective disorders, and other psychological disorders may be present. This phase of care is indicated by a documented inhibition of physical functioning evidenced by pain sensitivity, loss of sensation, and nonorganic signs such as fear which produce a physical inhibition or limited response to reactivation treatment. This phase of care may also be indicated for the injured employee whose physical capacity to work still does not meet the job requirements for heavy physical labor after adequate treatment, thereby causing an inability to return to full duty. This situation would be evidenced by an excessive transitional period of light duty or significant episodes of lost work time due to the need for continued medical treatment. This phase of care is also indicated for those injured employees who cannot tolerate either initial or intermediate phases of care.

(56) Tertiary Treatment - health care rendered during the tertiary phase of care.

(57) Time Limited - a specific duration of clock or calendar time which is not exceeded on a routine basis.

(58) [~~(21)~~] Treating Doctor - the doctor primarily responsible for [~~coordinating~~] the employee's health care for an injury. [~~(synonymous with Primary Gatekeeper)~~]

(59) [~~(22)~~] Treatment Duration - calendar time allowed for treatment for a specific phase [~~level~~] of care.

(60) Treatment Module - a standard which establishes routine parameters of time within which to provide therapy for the illness or injury.

(61) [~~(23)~~] Treatment Plan - [~~this is~~] a written document which must contain the following components:

(A) type of intervention/treatment modality

(B) frequency of treatment;

(C) expected duration of treatment;

(D) expected clinical response to treatment; and

(E) specification of a re-evaluation timeframe.

(62) [~~(24)~~] Work Conditioning - a highly structured, goal-oriented, individualized treatment program using real or simulated work activities in conjunction with conditioning tasks. Work conditioning is a single disciplinary approach.

(63) [~~(25)~~] Work Hardening - a highly structured, goal-oriented, individualized treatment program designed to maximize the ability of the persons served to return to work. Work Hardening programs are interdisciplinary in nature with a capability of addressing the functional, physical, behavioral, and vocational needs of the injured employee [~~worker~~]. Work Hardening provides a transition between management of the initial injury and return to work while addressing the issues of productivity, safety, physical tolerances, and work behaviors. Work Hardening programs use real or simulated work activities in a relevant work environment in conjunction with physical conditioning tasks. These activities are used to progressively improve the biomechanical, neuromuscular, cardiovascular/metabolic, behavioral, attitudinal, and vocational functioning of the persons served.

(k) (No change.)

(l) Revision Bibliography:

(1) American College of Occupational and Environmental Medicine, Practice Guidelines Committee, (1997) OCCUPATIONAL MEDICINE PRACTICE GUIDELINES, Chapter 14, Low Back Pain Complaints, OEM Press.

(2) American osteopathic Association, (1998) PROTOCOLS FOR OSTEOPATHIC MANIPULATIVE TREATMENT, Chicago.

(3) Block, A.R., Kramer, E.F., Fernandez, E. Eds. HANDBOOK OF PAIN SYNDROMES, Chapter 5, Clinical Outcome and Economic Evaluation of Multidisciplinary Pain Centers by Okifui, A., Turk, D.C. and Kalauokalani, D.; Lawrence Earlbaum & Associates Publishers, Mahwah, NJ 1999

(4) Connor, Patrick M., Darden, Bruce V., (1993). Cervical Discography Complications and Clinical Efficacy. SPINE, Vol. 18, no. 14, 2035-2038.

(5) Coulter, Ian D., et. al., (1996). The Appropriateness of Manipulation and Mobilization of the Cervical Spine. Rand.

(6) Cutler, Robert B., et. al., (1994). Does Nonsurgical Pain Center Treatment of Chronic Pain Return Patients to Work? A Review and Meta-analysis of the Literature, SPINE, Vol. 19, no. 6, 643-652.

(7) Flor, Herta, Fydrich, Thomas, Turk, Dennis C., (1992). Efficacy of Multidisciplinary Pain Treatment Centers: a Meta-Analytic Review, PAIN, Vol. 49, 221-230.

(8) Guyer, Richard D., Ohnmeiss, Donna D. (1995). Contemporary Concepts in Spine Care Lumbar Discography, Position Statement from the North American Spine Society Diagnostic and Therapeutic Committee. SPINE, Vol. 20, no. 18, 2048-2059.

(9) Holt, Earl P., (1975). Further Reflections on Cervical Discography, JAMA, Vol. 231, no. 6, 613-614.

(10) Jarvis, Kelly b., Phillips, Reed B., Morris, Elliot K. (1991). Cost per Case Comparison of Back Injury Claims of Chiropractic versus Medical Management for Conditions with Identical Diagnostic Codes. JOURNAL OF OCCUPATIONAL MEDICINE, Vol. 33, no. 8. 847-852.

(11) Kikuchi, Shinichi, MacNab, Ian, Moreau, Paul, (1981). Localisation of the Level of Symptomatic Cervical Disc Degeneration, THE JOURNAL OF BONE AND JOINT SURGERY, Vol. 63-B, no. 2, 272-277.

(12) Mayer, Tom, et.al., (1995). Contemporary Concepts in Spine Care Spine Rehabilitation, Secondary and Tertiary Nonoperative Care, SPINE, Vol. 20, no. 18, 2060-2066.

(13) Merriam, W.F. Stockdale, H.R., (1983). Is Cervical Discography of Any Value? EUROPEAN JOURNAL OF RADIOLOGY Vol. 3, 183-141.

(14) North American Spine Society Task Force on Clinical Guideline, Phase III Herniated Disc Clinical Guideline 10/13/98 Draft.

(15) Osler, G.E., (1987). Cervical Analgesic Discography, A test for diagnosis of the painful disc syndrome. SOUTH AFRICAN MEDICAL JOURNAL, Vol. 71 no. 363.

(16) Pauza, Kevin, Proposed Guidelines for the Performance of Spinal Injection Procedures April 1999 Draft.

(17) Parfenchuck, Thomas A., Janssen, Michael E. (1994). A Correlation of Cervical Magnetic Resonance Imaging and Discography/Computed Tomographic Discograms, SPINE, Vol. 19, no. 24, 2819-2825.

(18) Polatin, Peter B. et. al. (1993). Psychiatric Illness and Chronic Low-Back Pain, The Mind and the Spine-Which Goes First? SPINE, Vol. 18, no. 1, 66-71.

(19) Roth, David A. (1976). Cervical Analgesic Discography, A new Test for the Definitive Diagnosis of the Painful Disk Syndrome. JAMA, Vol. 235, no. 16, 1713-1714.

(20) Schellhas, Kurt P., et. al. (1996). Cervical Discogenic Pain, Prospective Correlation of Magnetic Resonance Imaging and Discography in Asymptomatic Subjects and Pain Sufferers. SPINE, Vol. 21, no. 3, 300-312.

(21) Shekelle, Paul G., et.al. (1992). Spinal Manipulation for Low-Back Pain, ANNALS OF INTERNAL MEDICINE, Vol. 117, no. 7, 590-653.

(22) Siebenrock, K.A., Aebi, M. (1994). Cervical Discography in Discogenic Pain Syndrome and Its Predictive Value for Cervical Fusion, ARCH ORTHOP TRAUM SURGERY, Vol. 113, 199-203.

(23) Simmons, Edward H., Segil, Clive M., (1975). An Evaluation of Discography in the Localization of Symptomatic levels in Discogenic Disease of the Spine, CLINICAL ORTHOPAEDICS AND RELATED RESEARCH, Vol. 108, 57-69.

(24) Stano, Miron, Smith, Monica, (1996). Chiropractic and Medical Costs of Low Back Care. MEDICAL CARE, Vol. 34, No. 3, 191-204.

(25) Turk, Dennis C., Gatchel, Robert J. Multidisciplinary Programs for Rehabilitation of Chronic Low Back Pain Patients; prepublication manuscript accepted for publication.

(26) U.S. Department of Health and Human Services, Public Health Service, Agency for Health Care Policy and Research, CLINICAL PRACTICE GUIDELINE, ACUTE LOW BACK PROBLEMS IN ADULTS, AHCPR Publication No. 95-0642, Decmeber 1994

(27) Van Tulder, Maurits, Koes, Bart W., Bouter, Lex M., (1997). Conservative Treatment of Acute and Chronic Nonspecific Low Back Pain, A Systematic Review of Randomized Controlled Trials of the Most Common Interventions. SPINE. Vol. 22, no. 18. 2128-2156.

(28) Wheeler, Anthony H., Goolkasian, Paula, Gretz, Stephanie (1998). A Randomized, Double-Blind, Prospective Pilot Study of Botulinum Toxin Injection for Refractory, Unilateral, Cervicothoracic, Paraspinal, Myofascial Pain Syndrome, SPINE, Vol. 23, no. 15, 1662-1667.

(29) Whitecloud, Thomas S. III, Seago, Randall A. (1987). Cervical Discogenic Syndrome, Results of Operative Intervention in Patients with Positive Discography, SPINE, Vol. 12, no. 4, 313-316.

(30) Zeidman, Seth M., Thompson, Kerry, Ducker, Thomas B. (1995). Complications of Cervical Discography: Analysis of 4400 Diagnostic Disc Injections, NEUROSURGERY, Vol. 37, no. 3, 414-417.

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

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TRD-9903484
Craig Smith
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 707-5829

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 1. Presumptive Medicaid Eligibility for Pregnant Women

Subchapter A. Eligibility Requirements

40 TAC §1.1

The Texas Department of Human Services (DHS) proposes an amendment to §1.1, concerning client eligibility requirements, in its Presumptive Medicaid Eligibility for Pregnant Women chapter. The purpose of the amendment is to comply with the Personal Responsibility and Work Opportunity Act of 1996, under which Medicaid Type Program 32 coverage expired in January 1999.

Eric M. Bost, commissioner, has determined that for the first five- year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the reference to a discontinued program is deleted from the rule. There will be no effect on small businesses because the program was discontinued January 1, 1997. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Mary Haifley at (512) 438-2599 in DHS's Texas Works Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-208, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is

not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§1.1. Client Eligibility Requirements.

(a)-(b) (No change.)

(c) Requirements for Application. To be eligible for presumptive Medicaid eligibility, pregnant women must meet the following requirements.

(1) Citizenship. Citizenship requirements are the same as those requirements specified for Temporary Assistance for Needy Families (TANF) [~~AFDC~~] applicants in 45 Code of Federal Regulations §233.50. [~~Citizenship requirements for aliens applying for Medicaid are as specified in §5.1002 of this title (relating to Legal Basis).~~]

(2)-(3) (No change.)

(d)-(e) (No change.)

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

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TRD-9903440
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call:

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Chapter 5. Medicaid Programs for Aliens

Subchapter A. Medicaid Benefits for Temporarily Legalized Aliens

40 TAC §5.1002, §5.1004

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

The Texas Department of Human Services (DHS) proposes the repeal of §§5.1002 and §5.1004, concerning Legal Basis and Eligibility Requirements, in its Medicaid Programs for Aliens chapter. The purpose of the repeals is to comply with the Personal Responsibility and Work Opportunity Act of 1996, under which Medicaid Type Program 32 coverage expired in January 1999.

Eric M. Bost, commissioner, has determined that for the first five- year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that rules for a discontinued program are deleted from the rules. There will be no effect on small businesses because the program was discontinued January 1, 1997. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Mary Haifley at (512) 438-2599 in DHS's Texas Works Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-208, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§5.1002. Legal Basis.

§5.1004. Eligibility Requirements.

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call:

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Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) proposes to amend §§15.100, concerning definitions; 15.105, concerning description of eligible clients; 15.210, concerning time frames for buy-in enrollment; 15.305, concerning eligibility requirements for the aged, blind, or disabled; 15.410, concerning deeming of resources; 15.455, concerning unearned income; 15.460, concerning income exemptions; and 15.475, concerning deeming of income; in its Medicaid Eligibility chapter. The purpose of the amendments is to update references to the Aid to Families with Dependent Children (AFDC) program to the current program name, Temporary Assistance for Needy Families (TANF). There are no policy changes.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. Bost also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that DHS's rules will not contain references to an obsolete program. The rules will reflect the correct program name. The amendments will not have an adverse economic effect on small or large businesses because they contain no policy changes. They only update references from AFDC to TANF.

Questions about the content of this proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long-Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-191, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. General Information

40 TAC §15.100, §15.105

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules. The department has determined that the proposed rule will not affect any private real property interests. Accordingly, no takings impact assessment regarding this rule is required under §2007.043 of the Texas Government Code and §2.19 of the Private Real Property Rights Preservation Act Guidelines adopted by the Attorney General and published on January 12, 1996, in the *Texas Register* (21 TexReg 387).

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.100. Definitions.

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

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

[~~(3) Aid to Families with Dependent Children (AFDC) - Financial assistance to low income families under Title IV-A of the Social Security Act. AFDC clients are also eligible for Medicaid.~~]

(3) [~~(4)~~] Alimony - Allowance made by a court to one spouse from funds of the other spouse, either pending decision on a suit for separation or divorce or after a decision in the suit.

(4) [~~(5)~~] Alternate care - A service provided in a client's home or community as an alternative to institutional care.

(5) [~~(6)~~] Annuity - An amount payable yearly or at other regular intervals.

(6) [~~(7)~~] Appeal - A client's request for a fair hearing concerning a department action.

(7) [~~(8)~~] Applicant - An individual with a pending application for medical assistance.

(8) [~~(9)~~] Application - A completed, signed, and dated application for assistance (aged and disabled).

(9) [~~(10)~~] Applied income - The amount of personal income a client in a long-term care facility must pay, to the facility, toward his cost of care.

(10) [~~(11)~~] Assets - All items that have monetary value and are owned by an individual.

(11) [~~(12)~~] Audit reconciliation - The process by which a facility with audit exceptions takes corrective action to clear the exceptions.

(12) [~~(13)~~] Award - Something of value conferred or bestowed on an individual as a result of merit or need.

(13) [~~(14)~~] BENDEX (Beneficiary Data Exchange) - Computer tape from the Social Security Administration (SSA) giving Retirement, Survivors, and Disability Insurance (RSDI) and Medicare information about the department's clients.

(14) [~~(15)~~] Blind - An individual is considered blind under Supplemental Security Income (SSI) requirements if the visual acuity in his better eye is 20/200 or less with corrective lenses, or if he has tunnel vision that limits his field of vision to 20 degrees or less.

(15) [~~(16)~~] Bond - A written obligation to pay a sum of money at a future date.

(16) [~~(17)~~] Budgeting - The process of determining a client's eligibility and applied income.

(17) [~~(18)~~] Burial space - A burial plot, grave site, crypt, mausoleum, urn, casket, niche, or other repository customarily and traditionally used for the deceased's bodily remains. The term also includes necessary and reasonable improvements or additions to these spaces, including, but not limited to, vaults, headstones, markers, or plaques; burial containers; arrangements for opening and closing of grave site; and contracts for care and maintenance of the grave site. Contracts for care and maintenance are sometimes referred to as endowment or perpetual care.

(18) [~~(19)~~] Buy-in - The payment of Medicare Part B premiums by the department and for eligible Medicaid clients.

(19) [~~(20)~~] Client - Either an applicant for or a recipient of medical assistance.

(20) [~~(21)~~] Common law marriage - A relationship in which the parties live together and represent themselves to the public as husband and wife.

(21) [~~(22)~~] Community Care for Aged and Disabled (CCAD) - A group of alternate care services, either home-based or community based, for eligible aged and disabled Texans.

(22) [~~(23)~~] Community care service - A service provided in a client's home or community, as opposed to services provided in an institution. The terms community care and alternate care are synonymous.

(23) [~~(24)~~] Compensation - Any money, real or personal property, food, shelter, or services received by a client that are not usually provided by a family member.

(24) [~~(25)~~] Countable income - The amount of a client's income after all exemptions and exclusions.

(25) [~~(26)~~] Countable resource - Any resource that the department would have counted, in whole or in part, toward the resource limitation.

(26) [~~(27)~~] Current market value - Current value of a resource at the time of sale or transfer. See the definition of fair market value in this section.

(27) [~~(28)~~] Deeming - Counting all or part of the income or resources of another person (parent or spouse) as income or resources available to the client.

(28) [~~(29)~~] Deemor - A person (spouse or parent of a client) whose income or resources are available to the client.

(29) [~~(30)~~] Disabled - An individual who is unable to engage in any substantial, gainful activity because of any medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for a continuous period of at least 12 months.

(30) [~~(31)~~] Discounting - The advancement of money on a negotiable note or agreement and the deduction of interest or a premium in advance.

(31) [~~(32)~~] Early and periodic screening, diagnosis, and treatment (EPSDT) - Services offered under Medicaid for eligible children.

(32) [~~(33)~~] Earned income - Income a client receives for services performed as an employee or as a result of self-employment.

(33) [~~(34)~~] Earned income credits (EIC) - Payments from the Internal Revenue Service (IRS) to persons who have tax dependents and gross monthly earnings at or below levels established by IRS.

(34) [~~(35)~~] Earned income tax credit (EITC) - A special tax credit that reduces the federal tax liability of certain low-income working taxpayers.

(35) [~~(36)~~] Equity - The fair market value of a resource minus all money owed on it.

(36) [~~(37)~~] Excluded income - Income that is not counted when determining eligibility but that is counted to determine applied income.

(37) [~~(38)~~] Excluded resource - Any resource that the department does not count toward the resource limitation.

(38) [~~(39)~~] Exempt income - Income that is not counted in eligibility nor applied income determination.

(39) [~~(40)~~] Extended care facility (ECF) - A nursing home that is participating in Medicare as a skilled nursing facility.

(40) [~~(41)~~] Fair hearing - A meeting conducted by a regional hearing officer with a client or his representative who disagrees with and wishes to appeal some action taken on the client's case.

(41) [~~(42)~~] Fair market value - Amount of money an item would bring if sold in the current local market.

(42) [~~(43)~~] Federal benefit rate (FBR) - Standard payment amount in the SSI program.

(43) [~~(44)~~] Fiduciary agent - An individual who has authority to manage another person's funds.

(44) [~~(45)~~] Financial duress - Having insufficient funds to meet living expenses because of debts incurred for medical expenses for the institutionalized spouse, community-based spouse, or dependent, or because of replacement of a resource lost through theft or acts of God.

(45) [~~(46)~~] Financial management - The way a client manages his income, pays expenses, and maintains any remaining funds.

(46) [~~(47)~~] Fraud - Deliberate misrepresentation or willful withholding of information for the purpose of obtaining public assistance; either for self or another individual.

(47) [~~(48)~~] Health insurance claim (HIC) - Medicare claim number, which is the same as Social Security claim number or Railroad Retirement claim number (number with an alpha suffix.)

(48) [~~(49)~~] Home - A structure in which a client lives (including mobile homes, houseboats, and motor homes), other buildings, and all adjacent land.

(49) [~~(50)~~] Housebound Veterans Administration benefits (HB) - Veteran's Administration benefits for persons living in the community who need regular aid-and-attendance from another person.

(50) [~~(51)~~] Hospital insurance benefits (HIB) - Part A of Medicare.

(51) [~~(52)~~] Income - Receipt of any property or service a client can apply, either directly or by sale or conversion, to meet basic needs for food, clothing, and shelter. Countable income is the amount of a client's income after all exemptions and exclusions.

(52) [~~(53)~~] Income Eligibility Verification System (IEVS) - Computer tape matches required by federal law.

(53) [~~(54)~~] Ineligible child - for deeming purposes, the natural or adopted child of the client, of the client's spouse, or of the parent or parent's spouse, who lives with the client, is not eligible for SSI or Medical Assistance Only, and who is under age 18, or under age 21 and a student regularly attending a school, college, university, or course of vocational training in preparation for gainful employment.

(54) [~~(55)~~] Infrequent payment - A payment that is received no more than once per calendar quarter.

(55) [~~(56)~~] Inheritance - Cash, other liquid resources, noncash items, or any right in real or personal property received at the death of another. An individual may not have access to his inheritance pending legal action. An inheritance is income in the month of receipt unless the inherited item would be an excluded resource. Effective August 11, 1993, waiving an inheritance may result in a transfer of assets penalty.

(56) [~~(57)~~] In-kind support and maintenance - Food, clothing, or shelter that is provided to the client or that is purchased by someone else. Any cash payments given directly to the client for food, clothing, or shelter are cash income and not in-kind support and maintenance.

(57) [~~(58)~~] Institution - An establishment that makes avail- able some treatment or services, besides food and shelter, to four or more persons who are not related to the proprietor. Also see definition of public institution in this section.

(58) [~~(59)~~] Institutional care - Long-term nursing care in a nursing home, ICF-MR facility, or state institution.

(59) [~~(60)~~] Institutional cases - Medical assistance only cases in state institutions.

(60) [~~(61)~~] Insurance - The following terms apply to the definition of insurance:

(A) The insured is the individual upon whose life a whole life or straight life policy is effected.

(B) The beneficiary is the individual (or entity) named in the con- tract to receive the proceeds of the policy upon the death of the insured.

(C) The owner is the individual paying the premiums on the policy, with the right to change it as he may see fit. The owner is the only individual who can receive the cash surrender amount of the policy.

(D) The insurer-assurer is the company that contracts with the owner.

(E) The face value amount is the basic death benefit or maturity amount, which is specified on the policy's face. The face value does not include dividends, additional amounts payable because of accidental death, or other special provisions.

(F) The cash surrender value is the amount that the insurer pays if the policy is cancelled before death or before it has matured. The cash surrender value usually increases with the age of the policy.

(G) A participating life insurance policy is one in which dividends are distributed to the policy holder.

(H) A nonparticipating life insurance policy means that dividends are not distributed to the policy holders.

(I) Default is the failure to pay the insurance premiums. There may be conditions in the policy relating to default.

(J) Ordinary life insurance (also known as whole life or straight life) is a contract for which the owner pays premiums and the insurer pays the face amount of the policy to the beneficiary upon the death of the insured.

(K) An individual policy is a policy that is paid for entirely by the owner.

(L) A group policy is usually issued through an employer or organization. The premiums may include some contribution from the employer.

(M) Dividends are shares of surplus funds allocated to the policy holders of participating insurance policies. They generally represent a previous overpayment of premiums. Dividends may be received as cash payments; used to reduce future premium payments; applied to the existing insurance to increase coverage; or left as a separate accumulation of funds that draw interest.

(61) [~~(62)~~] Intermediate Care Facility (ICF) - Medium level of nursing home care. Formerly ICF III. Effective October 1, 1990, an ICF is officially designated as nursing facility (NF).

(62) [~~(63)~~] Intermediate Care Facility for Mentally Retarded (ICF-MR) - Public or private facilities that provide client care in 24-hour specialized residential settings for the mentally retarded.

(63) [~~(64)~~] Intermediate Care II (ICF II) - Level of care in a nursing home for persons who need minimal nursing care. Effective October 1, 1990, an ICF is officially designated as nursing facility (NF).

(64) [~~(65)~~] Irregular payment - A payment made without an agreement or understanding and without any reasonable expectation that payment will occur again.

(65) [~~(66)~~] Level of care (LOC) - Type of care a client is eligible to receive in an ICF/MR facility.

(66) [~~(67)~~] Level of care determination (LCD) - Determination made by a Texas Department of Health MR program regarding the type of care a client requires.

(67) [~~(68)~~] Life estate - A contract transferring certain rights in property to a person for his life time. The person usually has the right to possess, use, receive profits, and sell his estate interest.

(68) [~~(69)~~] Liquid resources - Cash or financial instrument that can be converted to cash within 20 workdays. Liquid resources include cash, savings accounts, checking accounts, stocks, bonds, and time deposits. Liquid resources may also include promissory notes, loans, and mortgages.

(69) [~~(70)~~] Loan - A transaction whereby one party advances money to another party who promises to repay the debt in full, with or without interest.

(70) [~~(71)~~] Long Term Care Unit (LTCU) of Texas Department of Health (TDH) - A team of TDH health-care professionals responsible for quality assurance, licensure, and certification functions in the Title XIX facilities.

(71) [~~(72)~~] Materially Participating - A business owner is determined to be materially participating if he meets any one of the following criteria:

(A) The owner engages in periodic advice and consultation with the tenant, inspection of the production activities, and furnishing of machinery, equipment, livestock, and production expenses.

(B) The owner makes management decisions that affect the success of the enterprise.

(C) The owner performs a specified amount of physical labor to produce the commodities raised.

(D) The owner does not meet the full requirements above but his involvement in crop production is nevertheless significant.

(72) [~~(73)~~] Medicaid - A program of medical care authorized by Title XIX of the Social Security Act and the Human Resources Code. It is a federal/state program that is state administered, utilizing a combination of state and federal dollars to purchase medical care for categorically needy and medically indigent people.

(73) [~~(74)~~] Medicaid-qualifying trusts (MQT) - A Medicaid- qualifying trust is one that the client, his spouse, guardian, or anyone holding his power of attorney establishes using the client's money. The client is the beneficiary of a Medicaid-qualifying trust. A Medicaid-qualifying trust is one that was established between June 1, 1986, and August 10, 1993. Trusts which meet the MQT definition and were established prior to June 1, 1986, are treated as standard inter vivos trusts.

(74) [~~(75)~~] Medical Assistance Only (MAO) - Programs providing Medicaid coverage only, with no cash assistance.

(75) [~~(76)~~] Medical care facility - A nursing facility (Title XIX, Title XX, or private), hospital, ICF-MR, or an institution for mental diseases (IMD).

(76) [~~(77)~~] Medical care identification card - A monthly computer-issued notice to Medicaid clients, verifying Medicaid coverage. Also referred to as Medicaid card.

(77) [~~(78)~~] Medical effective date (MED) - Date Medicaid coverage begins.

(78) [~~(79)~~] Medical necessity (MN) - The determination that a client requires the services of registered nurses or licensed nurses in an institutional setting.

(79) [~~(80)~~] Medical services - Those services which are directed toward diagnostic, preventive, therapeutic, or palliative treatment of a medical condition and which are performed, directed, or supervised by a state-licensed health professional.

(80) [~~(81)~~] Medically necessary - The need for medical services in an amount and frequency sufficient, according to accepted standards of medical practice, to preserve health and life and to prevent future impairment. For dental services, prosthetic devices, and walking aids/shoes, the client must provide a statement of medical necessity from his physician, or a nurse practitioner, clinical nurse specialist, or physician's assistant who is working in collaboration with his physician.

(81) [~~(82)~~] Medicare - Medical coverage available to persons 65 years old or older and to certain disabled persons under Title XVIII of the Social Security Act.

(82) [~~(83)~~] Mineral rights - Ownership interests in the oil, gas, or minerals beneath the surface of a piece of property. Also see surface rights.

(83) [~~(84)~~] National Heritage Insurance Company (NHIC) - Company contracted with the department to serve as the insuring agent in providing health benefits to Medicaid clients.

(84) [~~(85)~~] Nursing facility (NF) - Formerly ICF or SNF.

(85) [~~(86)~~] Old Age, Survivors, and Disability Insurance (OASDI) - Title II of the Social Security Act. Also referred to as RSDI.

(86) [~~(87)~~] Parent - A child's natural or adoptive parent or the spouse of the natural or adoptive parent.

(87) [~~(88)~~] Pension funds - Monies held in a retirement fund under a plan administered by an employer or union, or an individual retirement account (IRA) or Keogh account as described in the Internal Revenue Code.

(88) [~~(89)~~] Preadmission screening and annual resident review (PASARR) - Federally mandated screening for mental illnesses, mental retardation, and related conditions before admission to a nursing facility to determine if placement is appropriate.

(89) [~~(90)~~] Prepaid burial contract - An agreement in which a client prepays his burial expenses and the seller agrees to furnish the burial.

(90) [~~(91)~~] Prize - Something of value won in a contest, lottery, or game of chance.

(91) [~~(92)~~] Promissory notes - A written or oral, unconditional agreement by the purchaser to pay the seller a specific sum of money at a specified time or on demand.

(92) [~~(93)~~] Property agreement - A pledge or security of a particular property or properties for the payment of a debt or the performance of some other obligation within a specified time. Property agreements on real estate (land and buildings) are generally referred to as mortgages but may also be called land contracts, contracts for deed, or deeds of trust.

(93) [~~(94)~~] Provider - A person, group, or agency providing a service to a client for a fee that is paid by the department. Providers are sometimes called vendors.

(94) [~~(95)~~] Public institution - An establishment that is operated or controlled by a federal or state government unit, or a political subdivision, such as the city or county.

(95) [~~(96)~~] Purchased health services - The department's state office division that monitors the NHIC contract.

(96) [~~(97)~~] Quality control (QC) - Review of a random sample of cases to determine correctness of assistance provided.

(97) [~~(98)~~] Railroad retirement benefits (RR) - Retirement, disability annuity, and survivorship benefits available to railroad employees and their families.

(98) [~~(99)~~] Real property - Land and houses or immovable objects attached to the land.

(99) [~~(100)~~] Redetermination - The decision concerning a client's continued eligibility for Medicaid benefits.

(100) [~~(101)~~] Refund value - The amount that a client would receive upon revocation or liquidation of his burial contract. The refund value is considered an available resource.

(101) [~~(102)~~] Relative - Son, daughter, grandson, granddaughter, stepson, stepdaughter, half sister, half brother, grandmother, grandfather, in-laws, mother, father, stepmother, stepfather, aunt, uncle, sister, brother, stepsister, stepbrother, nephew, niece. A dependant relative is one who was living in the client's home before the client's absence and who is unable to support himself outside of the client's home due to medical, social, or other reasons.

(102) [~~(103)~~] Rent - payment, either as cash or in-kind, which an individual receives for the use of real or personal property, such as land, housing, or machinery. Rental income is considered unearned income unless it is derived from self-employment, that is, someone is in the business of renting properties.

(103) [~~(104)~~] Resources - Cash, other liquid assets, or any real or personal property or other nonliquid assets owned by a client, his spouse, or parent, that could be converted to cash.

(104) [~~(105)~~] Restitution - Securing payment from a client when fraud is not indicated or pursued and when the client has been undercharged applied income because of previously unreported or under-reported monthly income or resources that do not involve income averaging.

(105) [~~(106)~~] Retirement, survivors, and disability insurance benefits (RSDI) - Title II of the Social Security Act. Also referred to as OASDI.

(106) [~~(107)~~] Review - The process of redetermining a client's continued eligibility for Medicaid.

(107) [~~(108)~~] Rider 49 status - Medicaid clients in nursing facilities in March 1980, who qualify for ICF II levels of care. Entitled to continue ICF II and to retain Medicaid after leaving facility, if eligible.

(108) [~~(109)~~] Royalty - A payment to an individual for permitting another to use or market his property (such as mineral rights, patents, or copyrights).

(109) [~~(110)~~] Skilled nursing facility - A type of nursing home under Medicaid and Medicare. Also referred to as extended care facility, under Medicare. Effective October 1, 1990, refers only to Medicare facilities.

(110) [~~(111)~~] Social Security (SS)- A federal system of old-age, unemployment, or disability insurance for various categories of employed and dependent persons, financed by a fund maintained jointly by employees, employers, and the government.

(111) [~~(112)~~] Social Security Administration (SSA) - An organization of the Department of Health and Human Services (HHS). SSA processes SSI/SDX transactions for the states and is involved extensively in the Medicare program.

(112) [~~(113)~~] Social Security claim number (SSCN) - Usually same as Medicare claim number.

(113) [~~(114)~~] Social Security number (SSN) - A reference number used by the SSA to identify individual contributors to the Social Security fund.

(114) [~~(115)~~] Social service - Any service, other than medical, which is intended to assist a person with a physical disability or social disadvantage to function in society on a level comparable to that of a person who does not have such a disability or disadvantage. No in-kind items are expressly identified as social services.

(115) [~~(116)~~] State data exchange (SDX) - Computer tape from the SSA giving SSI information about the department's clients. SDX information can be used as a source of verification and is available to workers through the department's computer terminals.

(116) [~~(117)~~] Stocks - Shares of ownership in a corporation.

(117) [~~(118)~~] Supplementary medical insurance benefits (SMIB) - Part B of Medicare.

(118) [~~(119)~~] Supplemental security income (SSI) - A needs-tested program, administered by the SSA, that provides monthly income to aged, blind, and disabled individuals.

(119) [~~(120)~~] Support - Contributions in cash or in kind that provide some or all of a client's usual needs.

(120) [~~(121)~~] Support and maintenance - The value of both food and shelter that a client receives.

(121) [~~(122)~~] Support or maintenance - The value of either food or shelter that a client receives, but not both.

(122) [~~(123)~~] Surface rights - Ownership interests in the exterior or upper boundary of land.

(123) Temporary Assistance for Needy Families (TANF) - Financial assistance to low-income families under Title IV of the Social Security Act. TANF clients are also eligible for Medicaid.

(124) - (138) (No change.)

§15.105. Description of Eligible Clients.

The Texas Medical Assistance Program provides, under Title XIX (Medicaid) of the Social Security Act, certain benefits to all individuals who meet the department's definition of eligible recipients. Eligible recipients are:

(1) individuals who are: [~~eligible for Aid to Families with Dependent Children (AFDC) or who would be except for age and school-attendance requirements. Also covered are the caretaker, second parent, and certified children; except when there is an only child who is 18 through 20 years old and therefore eligible for medical assistance only. In these cases, caretakers and second parents are eligible. To be eligible for Medicaid benefits, a family must meet the eligibility criteria outlined in Chapter 3, Income Assistance, of the department's rules.~~]

(A) Temporary Assistance for Needy Families (TANF) recipients whose eligibility criteria are outlined in Chapter 3 of this title (relating to Income Assistance Services);

(B) Pregnant women and children whose eligibility criteria are outlined in Chapter 4 of this title (relating to Medicaid Programs - Children and Pregnant Women); or

(C) Medically needy recipients whose eligibility criteria are outlined in Chapter 2 of this title (relating to Medically Needy Program).

(2) - (17) (No change.)

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

Filed with the Office of the Secretary of State, on June 10, 1999.

TRD-9903442
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 438–3765

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Subchapter B. Medicaid and Third-party Resources

40 TAC §15.210

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules. The department has determined that the proposed rule will not affect any private real property interests. Accordingly, no takings impact assessment regarding this rule is required under §2007.043 of the Texas Government Code and §2.19 of the Private Real Property Rights Preservation Act Guidelines adopted by the Attorney General and published on January 12, 1996, in the *Texas Register* (21 TexReg 387).

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.210. Time Frames for Buy-in Enrollment.

(a) Clients who have Medicare Part B coverage at the time they are certified for Medicaid are enrolled as follows:

(1) Supplemental Security Income (SSI) [~~SSI~~] and Temporary Assistance for Needy Families (TANF) [~~AFDC~~] clients are enrolled for buy-in effective the first month they receive a cash payment.

(2) - (5) (No change.)

(b) - (c) (No change.)

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438–3765

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Subchapter C. Basic Program Requirements

40 TAC §15.305

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules. The department has determined that the proposed rule will not affect any private real property interests. Accordingly, no takings impact assessment regarding this rule is required under §2007.043 of the Texas Government Code and §2.19 of the Private Real Property Rights Preservation Act Guidelines adopted by the Attorney General and published on January 12, 1996, in the *Texas Register* (21 TexReg 387).

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.305. Eligibility Requirements for the Aged, Blind, or Disabled.

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

(e) To be eligible, a client must file:

(1) for all other benefits to which he may be entitled.

(A) (No change.)

(B) These benefits do not include:

(i) federal, state, local, or private programs based on need, such as Temporary Assistance for Needy Families [~~Aid to Families with Dependent Children~~], or

(ii) (No change.)

(2) - (3) (No change.)

(f) - (k) (No change.)

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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Subchapter D. Resources

40 TAC §15.410

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules. The department has determined that the proposed rule will not affect any private real property interests. Accordingly, no takings impact assessment regarding this rule is required under §2007.043 of the Texas Government Code and §2.19 of the Private Real Property Rights Preservation Act Guidelines adopted by the Attorney General and published on January 12, 1996, in the *Texas Register* (21 TexReg 387).

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.410. Deeming of Resources.

(a) Deeming of spouse's resources. The department deems spouse's resources as follows:

(1) spouses living together. If a married client lives in the same household with an ineligible spouse, the department counts both the ineligible spouse's and the client's resources and applies the couple resource limit to the combined countable resources. The spouse's resources are counted even if they are not available to the client. Pension funds owned by an ineligible spouse or parent are excluded from resources for deeming purposes. If the ineligible spouse is a Temporary Assistance for Needy Families (TANF) [~~an AFDC~~] caretaker, his resources are not counted.

(2) - (3) (No change.)

(b) Deeming for children. The department's requirements regarding deeming for children are as follows:

(1) If a disabled child under 18 lives with his parents in the same household, the department must deem to the child certain resources of the parents. If a parent is a TANF [~~an AFDC~~] caretaker or a client, his resources are not counted.

(2)- (3) (No change.)

(c) (No change.)

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438–3765

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Subchapter E. Income

40 TAC §§15.455, 15.460, 15.475

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules. The department has determined that the proposed rule will not affect any private real property interests. Accordingly, no takings impact assessment regarding this rule is required under §2007.043 of the Texas Government Code and §2.19 of the Private Real Property Rights Preservation Act Guidelines adopted by the Attorney General and published on January 12, 1996, in the *Texas Register* (21 TexReg 387).

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.455. Unearned Income.

(a) (No change.)

(b) Support and maintenance (S/M). The following requirements apply to support and maintenance.

(1) Support and maintenance not counted as income. Support and maintenance are not counted as income if:

(A) - (G) (No change.)

(H) the client lives in a public assistance household, defined as one in which each member receives cash or vendor payments from one of the following: Temporary Assistance for Needy Families (TANF) [~~Aid to Families with Dependent Children (AFDC)~~], Supplemental Security Income (SSI), Refugee Assistance Act of 1980, a Bureau of Indian Affairs (BIA) general assistance program, payments based on need provided by a state/local government income maintenance program, Veterans Administration (VA) pension for veterans or widows, VA dependency and indemnity compensation (DIC) for parents, or payments under the Disaster Relief Act of 1974;

(I) (No change.)

(2) - (9) (No change.)

(c) - (d) (No change.)

(e) Other unearned income. Other sources of unearned income include:

(1) (No change.)

(2) interest payments on joint bank accounts. In this context, the term "spouse" includes a spouse whose income is considered in the applied income determination process. Interest payments on joint bank accounts are considered as follows:

(A) if the coholders of the account are not eligible for SSI, TANF [~~AFDC~~], nor MAO, nor do they have spouses or parents whose incomes are deemed to the client, all interest payments and deposits made by the ineligible coholders are considered as income of the client;

(B) if one or more coholders are eligible for TANF [~~AFDC~~], SSI, or MAO; or are spouses or parents whose incomes are deemed to the client, a deposit by the coholder, spouse, or parent is not considered to be income to the client;

(C) (No change.)

(3) - (11) (No change.)

§15.460. Income Exemptions.

(a) (No change.)

(b) The Texas Department of Human Services exempts income that a client receives from any of the following sources:

(1) - (5) (No change.)

(6) the amount of income of a dependent who is receiving Supplemental Security Income (SSI) or Temporary Assistance for Needy Families (TANF) [~~aid to families with dependent children (AFDC)~~]. This income has already been considered in determining the dependent's need for SSI or TANF [~~AFDC~~].

(7) - (38) (No change.)

§15.475. Deeming of Income.

(a) The following requirements apply:

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

(4) The Texas Department of Human Services (DHS) exempts certain types of income that may be received by a client's ineligible spouse, ineligible parent, a parent's ineligible spouse, or any ineligible children living in the household. The following types of income are not deemed to the client:

(A) - (E) (No change.)

(F) amount of income of a dependent who is receiving Supplemental Security Income (SSI) [~~SSI~~] or Temporary Assistance for Needy Families (TANF) [~~AFDC~~]. This income has already been considered in determining the dependent's need for SSI or TANF [~~AFDC~~];

(G) - (II) (No change.)

(b) The following exceptions apply to deeming of income:

(1) If the client's spouse, parent, or parent's spouse is a member of a TANF [~~an AFDC~~] group, that person's income is not deemed to the client.

(2) - (10) (No change.)

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State, on June 10, 1999.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 438–3765

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Chapter 20. Cost Determination Process

40 TAC §20.101, §20.105

The Texas Department of Human Services (DHS) proposes amendments to §20.101, concerning Introduction, and §20.105,

concerning General Reporting and Documentation Requirements, Methods, and Procedures, in its Cost Determination Process chapter. This proposal is submitted simultaneously with a proposal by the Texas Health and Human Services Commission (HHSC) to amend corresponding provisions of Title 1, Chapter 355, TAC.

The purpose of the amendments is to comply with changes in state and federal laws. One proposed amendment reflects a change in the Medicaid program rate approval process. The proposed amendment reflects the current process in which the Texas Board of Human Services no longer recommends rates to HHSC, because HHSC was assigned responsibility for Medicaid rate determination by a change in state law in House Bill 2913, 75th Legislature (1997). Since rates for most non-Medicaid payment rates have a Medicaid counterpart, approval of the Medicaid rates by HHSC effectively determines the non-Medicaid counterpart rates. Thus, a proposed amendment provides that non- Medicaid payment rates will be set to coincide with the counterpart Medicaid rates. A proposed amendment also removes references to the federal Boren Amendment, which formerly applied to the nursing facility program, because it is no longer in effect as a result of a change in federal law.

Eric M. Bost, commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the rules will reflect the changes in federal and state law and that providers will have defined for them the payment rate approval process. There will be no effect on small businesses, because the amendments reflect HHSC and DHS current Medicaid rate approval processes, based on changes in state law; and establish consistency in non-medicaid rate approval processes. The amendments also delete references to the federal Boren Amendment, which is no longer in effect as a result of a change in federal law. No changes in practice are required of any businesses, large or small. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of this proposal may be directed to Kathy Hall at (512) 438-3702 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-200, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§20.101. Introduction.

(a)-(b) (No change.)

(c) The Texas Department of Human Services (DHS) reimburses providers for contracted client services through reimbursement amounts determined as described in this chapter and in reimbursement methodologies for each program. Non-Medicaid, statewide, uniform reimbursements and reimbursement ceilings are approved by the Texas Department [~~Board~~] of Human Services [~~(board)~~]. Medicaid, statewide, uniform reimbursements, and reimbursement ceilings are approved by [~~The board recommends for approval to~~] the Texas Health and Human Services Commission (HHSC) [~~medical assistance or Medicaid reimbursements that are uniform by class~~]. In Medicaid programs where reimbursements are contractor-specific, [~~the board recommends for approval to~~] the HHSC approves the reimbursement parameter dollar amounts, e.g., ceilings, floors, or program reimbursement formula limits. In approving reimbursement amounts DHS or the HHSC [~~the board~~] takes into consideration staff recommendations based on the application of formulas and procedures described in this chapter and in reimbursement methodologies for each program. However, DHS or the HHSC [~~the board~~] may adjust staff recommendations when DHS or the HHSC [~~the board~~] deems such adjustments are warranted by particular circumstances likely to affect achievement of program objectives, including economic conditions and budgetary considerations. [~~For the nursing facility program subject to the federal Boren Amendment, any downward reimbursement adjustments may not exceed the amount of any mark-up or margin over projected costs. For the nursing facility program, this limitation ensures that downward reimbursement adjustments do not reduce reimbursement below the costs which must be incurred by efficient and economic providers meeting federal and state standards.~~] Medicaid reimbursement methodology rules are developed and recommended for approval [~~by the board~~] to the HHSC. The HHSC has oversight authority with respect to the state's Medicaid rules.

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

§20.105. General Reporting and Documentation Requirements, Methods, and Procedures.

(a)-(c) (No change.)

(d) Amended cost report due dates. DHS accepts submittal of provider- initiated or DHS-requested amended cost reports as follows.

(1) Provider-initiated amended cost reports must be received no later than the date in subparagraph (A) or (B) of this paragraph, whichever occurs first. Amended cost reports received after the required date have no effect on the reimbursement determination. Amended cost report information that cannot be verified will not be used in reimbursement determinations. Provider-initiated amended cost reports must be received no later than the earlier of:

(A) (No change.)

(B) for Medicaid programs, 30 days prior to the public hearing on proposed reimbursement or reimbursement parameter amounts; and for non-Medicaid programs 30 days prior to the administrative closing of the cost report database for reimbursement determination [~~45 days, prior to the DHS board meeting to approve reimbursement or reimbursement parameter amounts~~].

(2) (No change.)

(e)-(f) (No change.)

(g) Public hearings.

(1) Uniform reimbursements. For Medicaid programs where reimbursements are uniform by class of service and/or provider type, DHS and the HHSC will hold a public hearing on proposed reimbursements before the HHSC [~~Texas Board of Human Services (board)~~] approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the [~~DHS's~~] proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed statewide uniform Medicaid reimbursements will be made available to the public. This material will include the proposed reimbursements, the inflation adjustments used to determine them, and the impact on reimbursements of the major cost limits. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a [~~written~~] summary of the comments made during the public hearing will be presented to the HHSC [~~board~~].

(2) Contractor-specific reimbursements. For Medicaid programs in which [~~In programs where~~] reimbursements are contractor-specific, DHS and the HHSC will hold a public hearing on the reimbursement determination parameter dollar amounts (e.g., ceilings, floors, or program reimbursement formula limits) before the HHSC [~~board~~] approves parameter dollar amounts. The purpose of the hearing is to give interested parties an opportunity to comment on the [~~DHS's~~] proposed reimbursement parameter dollar amounts. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursement parameter dollar amounts. At least ten working days before the public hearing takes place, material pertinent to the proposed reimbursement parameter dollar amounts will be made available to the public. This material will include the proposed reimbursement parameter dollar amounts, the inflation adjustments used to determine them, and the impact on the reimbursement parameter dollar amounts of the major cost limits. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a [~~written~~] summary of the comments made during the public hearing will be presented to HHSC [~~the board~~].

(h) (No change.)

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

Filed with the Office of the Secretary of State, on June 9, 1999.

TRD-9903398
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: September 1, 1999
For further information, please call: (512) 438–3765

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Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 142. Investigations and Hearings

40 TAC §142.22, §142.31

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §142.22 and §142.31 concerning Investigations and Hearings. These sections contain the procedures concerning investigations of abuse or neglect of children, the elderly, or the disabled by chemical dependency counselors or facilities funded or licensed by the commission and describe the procedures for facility and chemical dependency counselor disciplinary hearings.

These amendments are proposed to update organizational references and provide consistency with the Government Code regarding minimum amount of notice that must be given regarding the date, time and place of administrative hearings.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be clarity about the procedures concerning investigations of abuse or neglect of children, the elderly, or the disabled by chemical dependency counselors or facilities funded or licensed by the commission and consistency regarding the minimum notice given to respondents in administrative hearings. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*.

These amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities and under Texas Civil Statutes, Article 4512o, which provides the commission with the authority to establish procedures for the licensure of chemical dependency counselors.

The codes affected by the proposed amendments are the Texas Health and Safety Code, Chapter 464 and Texas Civil Statutes, Article 4512o.

§142.22. Investigations of Abuse or Neglect of Children, the Elderly, or the Disabled.

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

(e) Reports. In abuse or neglect cases, the investigator submits a written report to the [~~assistant~~] deputy for quality assurance [~~program compliance~~] within five days of initiating the investigation. The commission notifies all relevant parties of the investigative findings in writing.

(f)-(g) (No change.)

§142.31. Procedure for Facility and Chemical Dependency Counselor Disciplinary Hearings.

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

(e) The respondent is entitled to at least ten [~~15~~] days notice of the date, time, and place of the administrative hearing. The administrative hearing shall be conducted by an administrative

law judge employed by the State Office of Administrative Hearings. Administrative hearings shall comply with the requirements of Texas Government Code, Chapter 2001, Subchapter C and the State Office of Administrative Hearings' Rules of Procedure, 1 Texas Administrative Code, Chapter 155.

(f)-(l) (No change.)

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903487
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 25 ,1999
For further information, please call: (512) 349–6733

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40 TAC §142.32

The Texas Commission on Alcohol and Drug Abuse proposes an amendment to §142.32 concerning Investigations and Hearings. This section describes the procedures regarding administrative penalties for facilities and chemical dependency counselors.

The amendment is proposed to: clarify commission's authority to classify offenses not already included in the guidelines; complete the list of disciplinary actions available to the commission; establish commission's role in judging compliance; allow the commission to choose an administrative penalty or an alternate action when the total dollar value of a facility's assessed penalty is over $5,000; limit the number of facility waivers and require compliance as a precondition when appropriate; eliminate waiver of administrative penalties for counselors; clarify board and executive director responsibilities in approving administrative penalties; provide licensees an option to surrender the license in lieu of paying administrative penalties; and eliminate an outdated transition clause. In addition, amendments to the graphics that are included in this section are made to revise the method of assigning points for history of disciplinary action and to clarify that only full compliance is sufficient to receive credit for efforts to correct violations when assigning points.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rule is in effect there will be minimal fiscal implications for the commission as facilities and counselors are assessed fees and pay those fees to the commission. There will be no fiscal impact for other state agencies or local government as a result of the proposed amendment.

Ms. Bleier has also determined that for each year of the first five years the rule is in effect the public benefit anticipated will be consistent, orderly and fair sanctions for persons and entities regulated by the commission. There is no additional effect on small businesses. There is no additional anticipated economic cost to persons required to comply with the amended rule as proposed; however, specific persons and entities will pay penalties to the commission.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*.

The amendment is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities and under Texas Civil Statutes, Article 4512o, which provides the commission with the authority to establish procedures for the licensure of chemical dependency counselors.

The codes affected by the proposed amendment is the Texas Health and Safety Code, Chapter 464 and Texas Civil Statutes, Article 4512o.

§142.32. Administrative Penalties.

(a) Violations are categorized according to the seriousness of the violation and the actual or potential harm to the health, safety, and welfare of the public. The commission has established specific guidelines for assigning categories. These guidelines show how various offenses are categorized, but do not limit the commission's authority to categorize any particular offense that is not already included in the guidelines or to modify those offenses already categorized. These guidelines are available for review at the commission's administrative offices at 9001 North IH 35, Suite 105, Austin, Texas, 78753.

(b) Administrative penalties are not assessed for the most serious violations, which are assigned to Category A. Instead, the commission will seek to deny, refuse to renew, revoke or suspend the license.

(c) Administrative penalties are not an option if the licensee has failed to pay administrative penalties assessed in the past.

(d) Self-reported facility violations are not subject to administrative penalties provided:

(1) the facility is required to report the violation;

(2) the facility achieves full compliance (as determined by the commission) by the established deadline; and

(3) the commission does not initiate a field investigation.

(e) Administrative penalties for facilities are assessed using the following point system.

(1) Points are assigned to each violation using the matrix shown in Figure 1.
Figure 1: 40 TAC §142.32(e)

(2) The point value of all violations is added and the total is multiplied by $10 per point.

(3) If the total dollar value is over $5,000, the commission may [~~will~~] seek to revoke or suspend the facility's license instead of imposing an administrative penalty.

(4) The commission will waive collection of the administrative penalties if:

(A) all violations fall into Category C or Category D; [~~and~~]

(B) the total assessed dollar value is less than $1,000;

(C) administrative penalties have not been waived two times in the past; and

(D) compliance, where appropriate, has been achieved or the facility has entered into an agreement with the commission which ensures future compliance.

(f) Administrative penalties for counselors are assessed using the following point system.

(1) Points are assigned to each violation using the matrix shown in Figure 2.
Figure 2: 40 TAC §142.32(f)

(2) The point value of all violations is added and the total is multiplied by $12 per point.

(3) If the total dollar value is over $2,000, the commission may [~~will~~] seek to revoke or suspend the counselor's license instead of imposing an administrative penalty.

[~~(4) The commission will waive collection of the administrative penalties if:~~]

[~~(A) all violations fall into Category C or Category D; and~~]

[~~(B) the total assessed dollar value is less than $500.~~]

(g)-(h) (No change.)

(i) The licensee shall accept the determination and recommended penalty or request an administrative hearing in writing within 20 days of the mailing of the notice. If the licensee accepts the determination and recommended penalty, the board (in cases involving facilities) or the executive director (in cases involving counselors) shall issue an order approving both.

(j)-(l) (No change.)

(m) A licensee may surrender the license in lieu of paying administrative penalties. The licensee may reapply for licensure if administrative penalties are paid within one year from the date of license surrender. [~~Facilities shall not be required to pay administrative penalties under these rules until January 1, 1999.~~]

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903488
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 25 ,1999
For further information, please call: (512) 349–6733

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Chapter 143. Funding

40 TAC §§143.3, 143.17, 143.21, 143.25

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §143.17 and §143.21 and proposes new §143.3 and §143.25 concerning Funding. These sections describe the service procurement plan, the process for funding decisions, the quarterly funding process and the developmental funding process.

These amendments and new sections are proposed to establish a service procurement plan, state that the commission may choose an alternative funding process when no fundable application is received, rename the developmental funding process to quarterly funding process to more accurately name this process, refine the quarterly funding process, and establish a new developmental funding process.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be a more fully developed funding process, which will provide better options for ensuring service needs are met. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments and new rules.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*.

These amendments and new rules are proposed under the Texas Health and Safety Code, Chapter 461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed amendments and new rules is the Texas Health and Safety Code, Chapter 461.

§143.3. Service Procurement Plan.

(a) The commission develops an annual service procurement plan to implement the Statewide Service Delivery Plan. The plan includes funding goals for the state overall and for each region.

(b) The service procurement plan identifies what services are needed, where the services are needed, and the priority order of the services to be purchased. It may also specify the desired level of funding for each service.

§143.17. Funding Decisions.

(a) (No change.)

(b) The panel's recommendations are reviewed [~~and approved~~] by the commission's executive management team and approved by the executive director.

(c)-(g) (No change.)

(h) If the commission does not receive a fundable application for a desired service, it may choose an alternative process to procure the service, including:

(1) the quarterly funding process described in §143.21 of this title (relating to Quarterly Funding);

(2) the developmental funding process described in §143.25 of this title (relating to Developmental Funding); or

(3) noncompetitive renewal described in §143.24 of this title (relating to Noncompetitive Renewal).

§143.21. Quarterly [~~Developmental~~] Funding.

(a) The commission may use [~~uses~~] the quarterly [~~developmental~~] funding process to:

(1) purchase additional services if service needs and funds remain after a competitive request for proposals;

(2) distribute funds that become available and must be awarded during a contract period; and

(3) consider funding for unsolicited applications.

(b) Funds available for one-time procurements and funds available for recurring services are competed [~~handled~~] separately under the quarterly funding process.

(c) (No change.)

(d) The commission identifies the goals and services/products to be purchased based on its service procurement plan [~~statewide service delivery plan, RAC recommendations,~~] and results of the previous Request for Proposals (RFP), as applicable.

(e) Selection criteria are designed to select applications that provide the best overall value to the state.

(1) (No change.)

(2) A minimum score is established for quarterly [~~developmental~~] funding. The minimum score may be less than the score established for a competitive RFP if the commission has the resources necessary to provide appropriate technical assistance.

(3) Selection criteria for quarterly [~~developmental~~] funds are approved by the commission's executive director.

(f) Once per quarter, if funds are available, notice [~~Notice~~] of available funds is published [~~quarterly~~] in the *Texas Register* and [~~monthly~~] on the commission's website and the state's electronic business daily. The notice includes:

(1) the services to be purchased;

(2) the geographic area to be served;

(3) funding limitations;

(4) method of payment;

(5) contract period;

(6) requirements for submitting an application; and

(7) the procedure the commission will use to award the contract.

(g) The commission accepts applications on an ongoing basis, and may also consider previously submitted proposals. Applications eliminated during prior competition may be revised and resubmitted for quarterly [~~developmental~~] funding.

(h) During the quarterly process, the commission will not consider applications received more than six months before the quarterly application due date unless the applicant has submitted a letter requesting consideration of a prior application during that six-month period. [~~Unsolicited applications are considered in the same way as other applications during this process. Each application is evaluated in relation to the services to be purchased and the selection criteria.~~]

(i) All applications are subject to the same requirements and deadlines. [~~Once per quarter, if funds are available for development, the commission reviews the applications.~~]

(1) To be considered for funding, an applicant must meet the application criteria listed in §143.15 of this title (relating to Application Criteria).

(2) Applicants who are not already funded by the commission must submit additional documentation regarding the organization's legal and financial status.

(3) If required, applicants shall comply with the Texas Review and Comment System (TRACS).

(j) Each application is evaluated in relation to the services to be purchased and the selection criteria. Commission staff evaluate and score proposals that were not scored during the competitive RFP. RAC members may also serve as reviewers outside their own regions.

(k) (No change.)

(l) The panel's recommendations are reviewed [~~and approved~~] by the commission's executive management team and approved by the executive director.

(m) Quarterly [~~Developmental~~] funding will not be available for services that will be included in a competitive RFP beginning six months prior to the scheduled RFP. Under extenuating circumstances, however, the commission's executive director may waive this provision.

§143.25. Developmental Funding.

(a) The commission may initiate the developmental funding process when a competitive process has failed to elicit an acceptable offer for a service identified in the annual services procurement plan.

(b) The commission will establish funding criteria for each developmental project to identify the minimum standards that must be met by an applicant in order to receive funds. The funding criteria will be approved by the commission's executive director.

(c) A notice that funds are available for the service will be published on the commission's website, on the state's electronic business daily, and in the *Texas Register* for at least 21 days.

(d) Commission staff will meet with the Regional Advisory Consortium, local providers, and other community groups and stakeholders to provide information about the identified need and identify potential providers. Staff will facilitate development of consensus on an organization or coalition to apply for the developmental funding.

(e) If more than one provider is interested in the project, the commission will terminate the developmental process and initiate a competitive process.

(f) When only one prospective applicant is identified, commission staff may provide consultation and technical assistance during the development of an application for developmental funding.

(g) After the application is submitted, an internal selection panel will review the proposal to determine whether it meets the minimum criteria established for the project and conduct a cost analysis or budget review.

(h) If the internal selection panel determines that the application meets the minimum criteria, it will recommend a level of funding and an implementation plan that includes:

(1) roles and responsibilities of the provider and commission staff;

(2) completion dates for key milestones; and

(3) conditions for payments related to achievement of key milestones.

(i) The panel's recommendations will be reviewed by the commission's executive management team and approved by the executive director.

(j) An organization funded through the developmental process must meet the application criteria stated in §143.15 of this title (relating to Application Criteria) when the contract is signed, except that a treatment applicant does not need to be licensed to provide the requested services to the proposed population until service delivery begins.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349–6733

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Chapter 144. Contract Requirements.

Subchapter A. General Provisions

40 TAC §144.1, §144.21

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §144.1 and §144.21 concerning General Provisions. These sections describe the applicability of this chapter and the definitions of terms used in this chapter.

These amendments are proposed to clarify that this chapter applies to intervention programs as well as prevention and treatment programs funded by the commission and to add and/or clarify the definitions of terms used in this chapter.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be a better understanding of the rules contained in this chapter and the programs to which these rules pertain. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 461.

§144.1. Applicability.

(a) This chapter applies to all prevention , intervention, and treatment programs funded by the commission.

(b) (No change.)

§144.21. Definitions.

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

(1) Abuse - Any act or failure to act which is done knowingly, recklessly or intentionally, including incitement to act, which caused or may have caused injury to a client or participant. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Client/participant abuse may be perpetrated by staff or other clients/particpants and includes: [~~any sexual activity between facility personnel and a client; corporal punishment; nutritional or sleep deprivation; efforts to cause fear; the use of any form of communication to threaten, curse, shame, or degrade a client; restraint that does not conform with these standards; coercive or restrictive actions taken in response to the client's request for discharge or refusal of medication or treatment that are illegal or not justified by the client's condition; and any other act or omission classified as abuse by the Texas Family Code, §261.001.~~]

(A) any sexual activity between facility personnel and a client/participant;

(B) corporal punishment;

(C) nutritional or sleep deprivation,

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a client/participant;

(F) restraint that does not conform with chapter 148 of this title (relating to Facility Licensure);

(G) coercive or restrictive actions taken in response to the client's/participant's request for discharge or refusal of medication or treatment that are illegal or not justified by the client's/participant's condition; and

(H) any other act or omission classified as abuse by the Texas Family Code, §261.001.

(2) Admission - Formal documented acceptance of a prospective client to a treatment facility, based on specifically defined criteria.

(3) Access - Ability to obtain or make use of.

(4) [~~(2)~~] Adolescent - An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

(5) [~~(3)~~] Adult - An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed by marriage or judicial decree.

(6) Aftercare - Structured services provided after discharge from a treatment facility which are designed to strengthen and support the client's recovery and prevent relapse.

(7) AIDS - Acquired Immune Deficiency Syndrome, the end stage of HIV infection. AIDS can only be diagnosed by a physician using criteria established by the National Centers for Disease Control and Prevention.

(8) Alternatives- A strategy that gives participants and their families the opportunity to take part in educational, cultural, recreational, and work-oriented substance-free activities. Activities under this strategy are designed to encourage and foster bonding with peers, family and community.

(9) [~~(4)~~] Approve - Authorize in writing.

(10) [~~(5)~~] Assessment - A process which identifies problems, needs, strengths, and resources as they pertain to ATOD use or abuse and related behaviors or activities. Assessments are used to initiate, maintain, or update individualized plans to address the identified needs and problems. See also Treatment Assessment.

(11) Assets (individual) - A set of essential building blocks that help young people grow up healthy, caring, and responsible. External assets include support, empowerment, boundaries and expectations, and constructive use of time. Internal assets include commitment to learning, positive values, social competencies, and positive identity.

(12) ATOD - Alcohol, tobacco and other drugs.

(13) Care coordination - Processes used to ensure an individual receives all needed substance abuse services through a seamless, organized delivery system.

(14) [~~(6)~~] Case management - A systematic process to ensure clients receive all substance abuse, physical health, mental health, social, and other services needed to resolve identified problems and needs. Case management activities are [~~Services~~] provided by an accountable staff person and [~~which~~] include:

(A) linking a client with needed services;

(B) helping a client develop skills to use basic community resources and services; and

(C) monitoring and coordinating the services received by a client.

(15) [~~(7)~~] Chemical dependency - Substance dependence or substance abuse as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders. [~~The abuse of, psychological or physical dependence on, or addiction to alcohol, a toxic inhalant, or any substance designated as a controlled substance in the Texas Controlled Substances Act.~~]

(16) Chemical dependency screening - A brief interview conducted in person or by phone determine if there is a potential substance abuse problem. Screening may be performed by a non-QCC. If a potential problem is identified, the individual should be referred for a treatment assessment.

(17) [~~(8)~~] Child - An individual under the age of 13.

(18) [~~(9)~~] Client - An individual who has been admitted to a chemical dependency [~~substance abuse~~] treatment facility licensed or funded by the commission and is currently receiving services. [~~A licensed chemical dependency counselor providing chemical dependency services at a facility shall not have a non-professional relationship with any client receiving chemical dependency or related services from the facility for two years after the client is discharged.~~]

(19) Client Data Systems (CDS) Forms - CDS forms include the Admission Report, Discharge Report, Follow-up Report, and CDS Facility Summary.

[~~(10) CODAP - Client-Oriented Data Acquisition Process.~~] (20) Cognizant agency - The federal or state agency responsible for reviewing, negotiating, and approving an organization's cost allocation plans or indirect cost proposals.

(21) Combination program - A comprehensive prevention and/or intervention program which serves a combination of target populations (universal, selective, or indicated) by providing a range of prevention and/or intervention services to meet different levels of need for a particular setting.

(22) [~~(11)~~] Commission - The Texas Commission on Alcohol and Drug Abuse.

(23) Community-based process - A strategy designed to enhance the ability of the community to provide effective prevention, intervention, and treatment services for ATOD problems and HIV infection through community mobilization and empowerment. Activities include multi-agency coordination and collaboration, networking, and development of written agreements among community organizations.

(24) Community coalition - A diverse group of community organizations and individuals organized to reduce ATOD problems in the community.

(25) [~~(12)~~] Consenter - The individual legally responsible for giving informed consent for a client. This may be the client, parent, guardian, or conservator. Unless otherwise provided by law, a legally competent adult is his or her own consenter. Consenters include adult clients, clients 16 or 17 years of age, and clients under 16 years of age admitting themselves for chemical dependency [~~substance abuse~~] counseling under the provisions of the Texas Family Code, §32.004.

(26) Continuum of services - A planned, coordinated service system which includes prevention, intervention, outreach, screening, referral, treatment and aftercare. Continuity of care has two dimensions and goals: (1) cross-sectional, so that the services provided to an individual at any given time are comprehensive and coordinated; and (2) longitudinal, so that the system provides comprehensive, integrated services over time and is responsive to changes in the person's needs.

(27) [~~(13)~~] Counseling - Face-to-face interactions in which a counselor helps an individual, family or group identify, understand, and resolve issues and problems. [~~Assisting an individual or group to develop an understanding of problems, define goals, and plan action reflecting the individual's or group's interest, abilities, and needs as affected by chemical dependency problems.~~]

[~~(14) Counseling session - A scheduled meeting of 30 minutes or longer duration where group, individual, or family counseling is provided.~~]

(28) [~~(15)~~] Counselor - A qualified credentialed counselor or a counselor intern [~~working under direct supervision~~].

(29) [~~(16)~~] Counselor intern (CI) - A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or an approved clinical training institution who has been designated as a counselor intern by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified credentialed counselor (QCC).

(30) [~~(17)~~] Crisis intervention - Services designed to intervene in situations which may or may not involve alcohol and drug abuse, and which may escalate and result in a crisis if immediate attention is not provided. Services include face-to-face individual,

family, or group interviews/interactions and/or telephone contacts to identify [~~the participant's family's~~] needs.

(31) CSAP's six prevention strategies - The six strategies identified by the Center for Substance Abuse Prevention that are delivered in prevention and intervention programs. The six strategies are: prevention education and skills training, alternatives, problem identification and referral, information dissemination, community-based process, and environmental and social policy.

(32) [~~(18)~~] Cultural competency [~~awareness and sensitivity~~] training - Training to improve an individual's ability to understand and interact with persons of a different culture. Culture defines the lifestyle of a distinct population and includes values, behavioral norms, and patterns of interpersonal relationships. It may be based on race, ethnicity, religion, age, gender, sexual orientation, or disability.

(33) Discharge - Formal, documented termination from a treatment facility. Discharge occurs when a client successfully completes treatment goals, leaves against professional advice, or is terminated for other reasons.

(34) [~~(19)~~] Documentation - A written and/or electronic record that includes a date and signature and provides authenticated evidence to substantiate compliance with standards, such as minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

(35) [~~(20)~~] DSM-IV - The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Revised, published by the American Psychiatric Association. Any reference to DSM-IV is understood to mean the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

(36) [~~(21)~~] Ensure - To take all reasonable and necessary steps to achieve results.

(37) Environmental and social policy - A strategy designed to establish or change written and unwritten community standards, codes, and attitudes, thereby influencing incidence and prevalence of substance abuse in the general population. It includes activities that center on legal and regulatory initiatives and those that relate to the service and action-oriented initiatives.

(38) Evaluation (program) - A formal process for collecting, analyzing, and interpreting information about a program's implementation and effectiveness.

~~[(22) Evaluation program - Written assessment activities, performed internally or externally, of a program or a service and its staff, activities, and planning process to determine whether program or service goals are met, staff and activities are efficient and effective, and whether or not a program or service has any effect on the problem which it was created to address and/or on the population which it was created to serve.]~~

(39) Exit summary - Documentation of all referral and follow-up activities provided to individuals or family members receiving intervention counseling services.

(40) [~~(23)~~] Exploitation - An act or process to use, either directly or indirectly, the labor or resources of a client/participant for monetary or personal benefit, profit, or gain of another individual or organization.

(41) Facility - A legal entity that provides one or more chemical dependency treatment programs.

(42) [~~(24)~~] Family - The children, parents, brothers, sisters, other relatives, foster parents, guardians, or significant others who perform the roles and functions of family members in the lives of clients/participants.

(43) [~~(25)~~] Financial assistance - A payment mechanism where payment is based on an approved line item budget.

(44) [~~(26)~~] HIV - Human Immunodeficiency Virus, the virus that causes AIDS. Infection is determined through a testing and counseling process overseen by the Texas Department of Health. Being infected with HIV is not necessarily equated with having a diagnosis of AIDS.

(45) HIV Antibody Counseling and Testing - A structured counseling session performed by Prevention Counseling and Partner Elicitation (PCPE) counselors registered with the Texas Department of Health (TDH). It promotes risk reduction behavior for those at risk of infection with HIV and other sexually transmitted diseases and offers testing for HIV infection.

(46) Indicated program - An intervention program designed to prevent the onset of substance abuse in individuals who do not meet DSM-IV criteria for abuse or dependence, but are showing early warning signs such as failing grades, dropping out of school, and use of alcohol and other gateway drugs.

(47) Information dissemination - A strategy that provides awareness and knowledge of ATOD problems and/or HIV infection and their harmful effects on individuals, families, and communities. It also gives the general population information about available programs and services. Information dissemination is characterized by one-way communication from the source to the audience, with limited contact between the two. Information is disseminated through written communications and/or in-person community presentations.

(48) [~~(27)~~] Intervention - A process that utilizes multiple strategies designed interrupt the illegal use of alcohol, tobacco and other drugs by youth and to break the cycle of harmful use of legal substances and all use of illegal substances by adults in order to halt the progression and escalation of use, abuse, and related problems. Intervention strategies target indicated populations.

(49) [~~(28)~~] Intervention counseling - Face-to-face interactions to assist [~~The process of assisting~~] individuals, families, and groups to identify, understand, and resolve issues and problems related to ATOD use [~~substance abuse~~] within a specific number of sessions or within a certain time frame. It is intended [~~in order~~] to intervene in problem situations and high risk behaviors [~~associated with substance abuse~~] which, if not addressed, may escalate to substance abuse or cause communicable disease [~~severe impairment~~].

(50) Key performance measures - Measures that reflect the services that are critical to the program design and intended outcomes of the program. Key performance measures are specified for all commission funded programs.

(51) [~~(29)~~] Life skills training (treatment) - A structured [~~formalized~~] program of training, based upon a written curriculum [~~program description~~], to help clients [~~assist the client in acquiring personal habits, attitudes, values, and social interaction skills that will enable the client to~~] manage daily responsibilities [~~function~~] effectively and [~~/or~~] become gainfully employed. It may include [~~includes~~] instruction in communication and social interaction, stress management, problem solving, daily living, and decision making.

(52) Minor Remodeling - Work required to change the interior arrangements or other physical characteristics of an existing facility, or to install equipment in order to meet program requirements and needs. It does not include relocation of exterior walls, roof, and floors in order to increase the amount of space to be used,

development or repair of parking lots, and completion of unfinished shall space to make it suitable for occupancy.

(53) [~~(30)~~] Neglect - Actions resulting from inattention, disregard, carelessness, ignoring, or omission of reasonable consideration that caused, or might have caused, physical or emotional injury to a client/participant. Examples of neglect include, but are not limited to, failure to provide adequate nutrition, clothing, or health care; failure to provide a safe environment free from abuse; failure to maintain adequate numbers of appropriately trained staff; failure to establish or carry out an appropriate individualized treatment plan; and any other act or omission classified as neglect by the Texas Family Code, §261.001.

(54) [~~(31)~~] Offer - To make available.

(55) Older adult - A person aged 55 or older.

(56) [~~(32)~~] OMB - Office of Management and Budget.

(57) [~~(33)~~] Outcome - The impact on the system or client/participant served.

(58) Outreach - Activities directed toward finding individuals who might not use services due to lack of awareness or active avoidance, and who would otherwise be ignored or underserved.

(59) Participant - An individual who is receiving prevention or intervention services.

(60) Policy - A statement of direction or guiding principle issued by the governing body.

(61) [~~(34)~~] Prevention - A process that utilizes multiple strategies designed to preclude the onset of the illegal use of alcohol, tobacco and other drugs by youth. Prevention principles and strategies foster the development of social and physical environments that facilitate healthy, drug-free lifestyles. Prevention strategies target universal and selected populations.

(62) Prevention education and skills training - A curriculum-based strategy designed to develop decision-making, problem solving, and other life skills. It also provides accurate information about the harmful effects of ATOD use, abuse and addiction pertinent to the needs of the target population. The basis of activities under this strategy is interaction between the educator/facilitator and the participants. These activities are aimed to increase protective factors, foster resiliency, decrease risk factors and affect critical life and social skills relative to substance abuse and/or HIV risk of the participant and/or family members.

(63) Primary population - The individuals directly targeted to participate in and benefit from the program.

(64) Problem identification and referral - A strategy that provides services designed to ensure access to appropriate levels and types of services needed by youth or adult participants. It includes identification of those individuals who have used or are at risk of using alcohol, tobacco, and other drugs. This strategy does not include any activity designed to determine if a person is in need of treatment.

(65) Procedure - A step-by-step set of instructions.

(66) [~~(35)~~] Program - A [~~system of service delivery consisting of a~~] specific type of service delivered to a specific population as identified in the proposal.

(67) [~~(36)~~] Protective factors - Characteristics within individuals and social systems which may inoculate or protect persons against risk factors and strengthen their determination to reject or avoid substance abuse. [~~Those characteristics within social systems, such as family, schools, peer groups, that foster resiliency and include high expectations, caring and support, and the opportunity to be involved.~~]

(68) [~~(37)~~] Provide - To perform or deliver.

(69) [~~(38)~~] Provider - A distinct legal entity with an administrative and functional structure organized to deliver substance abuse services.

(70) [~~(39)~~] Qualified credentialed counselor (QCC) - A licensed chemical dependency counselor or one of the professionals listed below:

(A) licensed professional counselor (LPC);

(B) licensed master social worker (LMSW);

(C) licensed marriage and family therapist (LMFT);

(D) licensed psychologist;

(E) licensed physician;

(F) certified addictions registered nurse (CARN);

(G) licensed psychological associate; and

(H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psyche-mental health (APN-P/MH).

(71) Referral - The process of identifying appropriate services and providing the information and assistance needed to access them. (72) Retaliate - Take adverse action to punish or discourage a person who reports a violation or cooperates with an investigation, inspection, or proceeding. Such actions include but are not limited to suspension or termination of employment, demotion, discharge, transfer, discipline, restriction of privileges, harassment, and discrimination.

(73) Risk factor - A characteristic or attribute of an individual, group, or environment associated with an increased probability of certain disorders, addictive diseases, or behaviors.

(74) Screening - See chemical dependency screening.

(75) Secondary population - Family members and other individuals targeted to receive ancillary services because of their relationship to the participant/client.

(76) Selective program - A prevention program designed to target subsets of the total population that are deemed to be at higher risk for substance abuse by virtue of membership in a particular population segment. Risk groups may be identified on the basis of biological, psychological, social or environmental risk factors, and targeted groups may be defined by age, gender, family history, place of residence, or victimization by physical and/or sexual abuse. Selective prevention programs target the entire subgroup regardless of the degree of individual risk.

(77) Service record - The required documentation for all participants receiving intervention counseling services.

(78) [~~(40)~~] Staff - Individuals employed [~~hired directly~~] by a provider to provide services [~~for the provider~~] in exchange for money or other compensation.

(79) Standard Precautions–Infection control guidelines written by the National Centers for Disease Control and Prevention which are designed to prevent transmission of communicable diseases such as HIV, hepatitis, sexually transmitted diseases and TB within the healthcare setting. The commission's interpretation of those

guidelines are found in TCADA Workplace and Education Guidelines for HIV and Other Communicable Diseases.

(80) [~~(41)~~] STDs - Sexually transmitted diseases.

(81) Strategy - A prevention approach implemented to support the overall design and goals of a program.

(82) [~~(42)~~] Substance abuse - The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning.

[~~(43) TAC - Texas Administrative Code.~~]

(83) TCADA - Texas Commission on Alcohol and Drug Abuse.

(84) [~~(44)~~] Treatment (chemical dependency) - A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(85) Treatment assessment - An assessment to determine if an individual meets the DSM-IV criteria for substance abuse or dependence and is need of treatment. The assessment also determines the level of treatment most appropriate for the individual.

(86) [~~(45)~~] Unit cost - A payment mechanism in which a specified rate of payment is made in exchange for a specified unit of services.

(87) Universal program - A prevention program designed to address an entire population with messages and programs aimed at preventing or delaying the use and abuse of alcohol, tobacco, and other drugs. Universal prevention programs are delivered to large groups without any prior screening for substance abuse risk.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349–6733

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Subchapter B. Contract Administration

40 TAC §144.101

The Texas Commission on Alcohol and Drug Abuse proposes an amendment to §144.101 concerning Contract Administration. This section contains information regarding contract acceptance and legal precedence.

These amendment is proposed to require that providers carry a fidelity bond or insurance coverage equal to the amount of funding provided under the commission contract or $100,000, whichever is less; to mandate that this fidelity bond or insurance must provide for indemnification of losses due to fraudulent or dishonest acts committed by any of the provider's employees or volunteers; and to state the required order of legal precedence that must be followed by providers.

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

Ms. Bleier has also determined that for each year of the first five years the rule is in effect the anticipated public benefit will be better protection of public funds and more clarity about which rules and regulations govern commission funded programs. There is no additional effect on small businesses. The anticipated economic cost to persons required to comply with the proposed amendment will vary depending upon the provider's current insurance plan. It is estimated that the cost could be approximately $200 per year.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

The amendment is proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed amendment is the Texas Health and Safety Code, Chapter 461.

§144.101. Contract Acceptance and Legal Precedence.

(a)-(c) (No change.)

(d) The provider shall carry a fidelity bond or insurance coverage equal to the amount of funding provided under the commission contract or $100,000, whichever is less. The fidelity bond or insurance must provide for indemnification of losses due to fraudulent or dishonest acts committed by any of the provider's employees or volunteers either individually or in concert with others. [~~The provider shall maintain employee bonding for the executive director and the chief financial officer.~~]

(e) Providers shall follow this order of legal precedence:

(1) federal and state laws (including, but not limited to the federal block grant found at United States Code, Title 42, §300x);

(2) rules adopted by the commission and applicable federal regulations;

(3) terms and conditions of the contract;

(4) requirements stated in the request for proposals; and

(5) the application as amended or adjusted by the commission.

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

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40 TAC §§144.102-144.108, 144.123, 144.131, 144.133, 144.141, 144.142

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§144.102-144.104, 144.106, 144.107, 144.123, 144.131, 144.133, 144.141, 144.142 and proposes new §144.105 and §144.108. concerning Contract Administration. These sections contain information regarding amendments, organizational and personnel changes, matching prevention awards, billing, payment, reporting, financial assistance for treatment services, program income, expenditures requiring prior approval, travel, procurement, and subcontracting.

These amendments are proposed to require that all requests for contract amendments must be received at least 60 days before the end of the contract period unless the commission's executive director grants a waiver; to replace the term executive director with chief executive officer; to clarify that required matching funds are calculated based on the total program expenditures; to consolidate all provisions related to billing into a single section; to state that the commission is the payor of last resort; to expand the requirement for eligible providers to bill Medicaid for covered services to include the Children's Health Insurance Program and other public reimbursement; to describe the payment process; to establish that reports are due 30 days after the end of the reporting period; to replace the term electronic interface system with the web-based computer system; to describe the financial assistance payment mechanism for new treatment service providers, including limiting the amount of time a treatment provider can remain on financial assistance and setting criteria that must be met before the transfer is made to unit cost reimbursement; to clarify that commission funded providers must not use inability to pay as a reason to refuse any commission funded service, not just treatment, to an otherwise eligible applicant; to set a maximum of $10,000 for work considered to be minor remodeling; to specify that tobacco products are not allowable travel costs; to increase the monetary maximums that determine what type of price or rate quotation is required for small purchases; and to add language which will allow providers to subcontract with individuals.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be a more effective contract administration process for commission funded providers. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments and new sections.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments and new sections are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 461.

§144.102. Amendments.

(a)-(c) (No change.)

(d) All requests for contract amendments must be received at the commission at least 60 days before the end of the contract period. Under extenuating circumstances, however, the commission's executive director may waive this requirement.

§144.103. Organizational and Personnel Changes.

The provider shall notify the commission in writing within ten business days of:

(1) (No change.)

(2) changes in the following personnel:

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

(C) chief executive officer [~~director~~];

(D)-(G) (no change.)

§144.104. Matching Prevention Awards.

(a) Unless waived in writing by the commission, all providers funded to provide prevention or intervention services shall contribute 5.0% of the total program expenditures [~~award amount expended~~] in matching funds.

(b) (No change.)

§144.105. Billing.

(a) The Commission is the payor of last resort for chemical dependency treatment. A provider shall not bill the commission for services provided to a client if:

(1) the client is not financially eligible as described in §144.521 of this title (relating to Client Eligibility); or

(2) the client has access to another public or private source of payment for appropriate treatment.

(b) Any provider offering services which are eligible for Medicaid, Children's Health Insurance Program (CHIP), or other public reimbursement shall become an approved provider.

(1) The provider must screen all clients for Medicaid and CHIP eligibility. If a client is eligible but has not yet enrolled, the provider shall direct the client to apply for Medicaid or CHIP benefits and provide assistance as needed to facilitate the enrollment process.

(2) The provider must bill Medicaid and CHIP for all covered services delivered to eligible clients.

(c) The provider shall not bill the commission for a unit of service that has been billed to Medicaid or another third party payor who requires the provider to accept reimbursement as payment in full. If the third party payor denies payment or fails to respond or reimburse the provider for more than 60 days after the date the claim was billed, the provider may bill the commission for that unit of service. During the last month of the contract period, the provider may bill the commission for all outstanding third party reimbursement if the provider has reason to believe the payment request will be denied. If the provider charges the commission for a unit of service and then receives payment from another entity for the same unit of service, the revenue shall be treated as program income in accordance with §144.123 of this title (relating to Program Income).

(d) A provider shall not bill and receive payment in excess of actual costs from more than one entity for the same service at the same time for the same client. The total amount paid to a provider shall not exceed the actual costs of providing the services, either by client or in the aggregate. If double billing generates revenue that exceeds actual costs, the revenue shall be treated as program income in accordance with §144.123 of this title (relating to Program Income).

(e) The provider may accept funds from other funding sources that provide general support for the program.

(f) All requests for payment must be submitted no more than 30 days after the end of the contract period. The commission will not reimburse requests received after the 30-day period.

(g) Payment requests shall be accurate and submitted in the format required by the commission, and certified by the provider's authorized representative (specified in the contract).

§144.106. Payment [~~Request~~].

(a)-(b) (No change.)

(c) The commission may withhold payment if the provider is not in compliance with commission requirements, which include:

(1) rules adopted by the commission; [~~and~~]

(2) terms and conditions in the contract; and

(3) other applicable statutes and regulations.

(d) (No change.)

(e) Providers paid through the financial assistance payment mechanism who want to receive [~~monthly~~] cash advances must submit the completed method of payment selection form to the commission.

(f)-(h) (No change.)

~~[(i) Reimbursements must be requested at least quarterly. Final payment must be requested within 90 days after the end of the budget period.]~~

~~[(j) Payment requests shall be accurate and submitted in the format required by the commission, and certified by the provider's authorized representative (specified in the contract).]~~

§144.107. Reporting.

(a) The provider shall submit all reports as required by commission rules, the contract, and applicable instruction manuals. Reports shall be submitted in the specified form, manner, and timeframe. Unless otherwise specified, reports are due 30 days after the end of the reporting period.

(b) The provider shall submit all performance reports, financial reports, and requests for payment through the designated web-based computer [~~electronic interface~~] system. When equipment problems prevent electronic submission, the provider shall fax or mail paper copies to the commission. The provider's authorized official or designee specified in the Electronic Forms Signature Agreement is responsible for the completeness and accuracy of the data.

(c) The provider shall acquire and maintain the equipment and software needed for the web-based computer [~~electronic interface~~] system.

(d)-(e) (No change.)

(f) The provider shall reconcile the general ledger with the Financial Status Report (FSR) each quarter and maintain supporting documentation on site.

§144.108. Financial Assistance for Treatment Services.

(a) The commission's standard payment mechanism for treatment services is the unit cost payment mechanism.

(b) The commission may place a treatment program on financial assistance if the provider does not have the resources to provide needed treatment services without start-up funding and:

(1) has never before provided treatment or prevention services;

(2) will provide a specific type of commission-funded services for the first time;

(3) will provide commission-funded services in a specific geographic area or to a specific population for the first time; or

(4) will expand services at the commission's request to meet identified needs.

(c) Every treatment provider on financial assistance shall submit a plan for moving from financial assistance to a unit cost basis for reimbursement. The plan must include specific actions to be taken and target dates for completion.

(d) A treatment provider on financial assistance will be transferred to unit cost payment as soon as the provider meets financial and service stability criteria or at the end of 12 months, whichever is less.

(e) To meet financial and service stability criteria, the treatment program must:

(1) reach 80% of its client capacity as specified in the contract;

(2) implement written financial policies and procedures;

(3) achieve at least 80% of the state minimum performance measures targets in completion, follow-up and abstinence; and

(4) have a computed unit cost rate under 125% of the maximum rate for services provided.

(f) If a treatment provider does not meet the financial and service stability criteria after 12 months, the commission may place the provider on probation and extend financial assistance for up to four three-month periods.

(g) No treatment provider can remain on financial assistance for more than 24 months unless the commission's executive director grants a waiver based on extenuating circumstances.

§144.123. Program Income.

(a) (No change.)

(b) The program may charge reasonable fees for commission-funded services or activities provided:

(1) (No change.)

(2) an otherwise eligible applicant is not refused commission-funded services [~~treatment~~] for inability to pay.

§144.131. Expenditures Requiring Prior Approval.

Prior approval is required for certain costs charged to the commission contract or reported as program income or match. Costs that are allowable only with prior approval from the commission include:

(1) (No change.)

(2) Minor remodeling [~~Remodeling~~]. Work costing $5,000 or more which is required to change the interior arrangements or other physical characteristics of an existing facility, or to install equipment so that the facility may be used more effectively. Minor remodeling shall not exceed $10,000.

(3)-(5) (No change.)

§144.133. Travel.

(a)-(b) (No change.)

(c) Alcoholic beverages and tobacco products are not allowable travel costs.

§144.141. Procurement.

(a) The provider may use small purchase procurement procedures to obtain services, supplies, or other property costing no more than $25,000 in total. These rules do not apply to obtaining the services of a professional as defined in Texas Government Code, Chapter 2254.

(1) For any purchase under $2,000 [~~$1,000~~], price or rate quotations are not required.

(2) The provider shall obtain three verbal or written price or rate quotations for any purchase between $2,000 and $10,000 [~~$1,000 and $5,000~~]. Telephone and other verbal quotations must be documented.

(3) The provider shall obtain three written price or rate quotations for any purchase over $10,000 [~~$5,000~~].

(b) The provider shall select the vendor providing the best value and document the rationale [~~rational~~] for selection.

(c) (No change.)

§144.142. Subcontracting.

(a) Providers shall not subcontract, assign, or transfer any activity central to the purposes of the contract without prior written approval from the commission. The subcontractor shall be a corporation, partnership, sole proprietor, or another entity with legal authority to operate in the State of Texas.

(b)-(h) (No change.)

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

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Mark Smock

Deputy for Finance and Administration

Texas Commission on Alcohol and Drug Abuse

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For further information, please call: (512) 349–6733

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40 TAC §§144.105, 144.122, 144.125

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

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§144.105, 144.122 and 144.125 concerning Contract Administration. These sections contain the requirements for legal precedence, double billings, and Medicaid. The repeals are proposed because the requirements in these sections have been incorporated into other sections.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of the proposed repeals.

Ms. Bleier has also determined that for each year of the first five years the repeals are in effect the anticipated public benefit will less confusion about these regulations and how they relate to other requirements. There will be no effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

The repeals are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed repeals is the Texas Health and Safety Code, Chapter 461.

§144.105. Legal Precedence.

§144.122. Double Billings.

§144.125. Medicaid.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903493

Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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Subchapter C. Program Oversight

40 TAC §§144.201, 144.203, 144.204, 144.211–144.216

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§144.201,144.211-144.216 and proposes new §144.203 and §144.204 concerning Program Oversight. These sections contain information regarding commission oversight, on-site contract reviews, on-site compliance reviews, independent audit report, auditor qualifications, independent audit report requirements, independent audit report submission, corrective action plan, and audit report desk reviews.

These amendments and new sections are proposed to clarify how the commission may provide oversight to funded providers; to describe the purpose of and process for on-site contract reviews and inform providers of their responsibilities for responding to identified issues; to outline the on-site compliance review process including provider response and corrective action; to clarify the rules regarding required single audits and program audits; to specify that auditors must be licensed in the state in which the audit is performed at the time the audit is performed; to clarify what requirements must be included in the audit report; to specify that the rules regarding audit submission refer to independent audit reports; to clarify that the corrective action plan relates to the independent financial audit report and management letter; and to more accurately name and describe the audit report desk review process.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be better program oversight by the commission and a clearer understanding of the audit process and related requirements on the part of commission-funded providers. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments and new sections.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments and new sections are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed amendments and new sections is the Texas Health and Safety Code, Chapter 461.

§144.201. Commission Oversight [~~Compliance Review~~].

(a) All commission-funded providers, regardless of the level of funding, are subject to periodic reviews by the commission for adherence [~~compliance~~] with applicable federal, state and commission statutes and regulations and contract requirements. These include compliance reviews, monitoring visits, and contract monitoring reviews.

(b) The commission shall determine the extent of the review [~~,which shall be limited to services funded by the commission~~].

(c) The commission may conduct a scheduled or unannounced on-site reviews [~~inspection~~] or request the provider to submit materials for desk review.

(d)-(e) (No change.)

§144.203. On-site Contract Reviews.

(a) On-site contract reviews shall be conducted to determine if the provider has the financial and programmatic systems in place to meet contract requirements and deliver services.

(b) After an on-site contract review, the provider will receive a written summary of the review. The report will include a summary checklist of the major areas reviewed and the provider's performance related to these areas.

(c) The provider shall respond to the report by the specified deadline.

(d) The provider shall address the issues noted in the report within the allotted time frames or request an extension.

(e) The results of on-site contract review will be used by the commission in future funding decisions.

(f) Results of on-site contract reviews will be shared with other departments in the commission. The commission may decide to conduct additional reviews of the provider, based on the results of the on-site contract review.

§144.204. On-Site Compliance Reviews.

(a) On-site compliance reviews will be conducted to examine compliance with applicable federal, state, and commission regulations.

(b) After an on-site compliance review, the provider will be notified in writing of any noncompliance with federal, state, and commission regulation identified by the commission in the form of a draft report.

(c) The provider shall respond to the draft report and the deficiencies (if any) and submit a plan of corrective action (if necessary) to the commission within 14 calendar days of the postmark date.

(d) The corrective action plan shall include:

(1) the title(s) of the person(s) responsible for the corrective action;

(2) the corrective action planned; and

(3) the anticipated completion date.

(e) If the provider believes corrective action is not required for a noted deficiency, the response shall include an explanation and specific reasons.

(f) The provider's replies and corrective action plan (if any) shall become part of the final report.

(g) The provider shall correct deficiencies identified in the final report within a reasonable period of time.

§144.211. Independent [~~Financial~~] Audit Report.

(a) Providers [~~(except for-profit entities)~~] that expend a total amount of federal awards (from the commission and other funding sources) of at least $300,000 during their fiscal year must have a single audit or program-specific audit in accordance with the requirements of the Single Audit Act Amendments of 1996 and other governance guiding the program.

(1) If the funds are expended under more than one federal program the provider shall have a Single Audit.

(2) If the funds are expended under only one federal program and the provider is not subject to laws, regulations, or federal contracts that require a financial statement audit, the provider may elect to have a program-specific audit.

(3) The provider shall comply with the single audit requirements of Office of Management and Budget (OMB) Circular A-133.

(b) Providers expending a total amount of state funds of at least $300,000 during their fiscal year must have either a single audit or a program-specific audit as described in the Uniform Grant Management Standards. If the provider is already required to have a single audit because of federal funding, an additional program audit is not required. [~~Providers shall inform the commission in the contract if they expect to spend $300,000 or more in total federal awards from all funding sources.~~]

(c) Providers that expend less than $300,000 in federal funds from all sources and less than $300,000 in state funds from all sources during their fiscal year are not required to have an audit. However, these providers shall submit a signed statement to the commission after their fiscal year end documenting that they did not expend $300,000 or more in state or federal funds during the fiscal year. [~~Providers (including for-profit entities) expending a total amount of state funds from the commission of at least $300,000 during their fiscal year must have a program-specific audit that meets the standards in OMB Circular A-133. If the provider is already required to have a single audit because of federal funding, an additional program audit is not required.~~]

(d) When a provider expends both state and federal funds and is required to submit a single audit report, the state and federal expenditures may be combined in one financial statement in the report. However, the source and amount of funds expended (state vs. federal) must be clearly stated. [~~Providers that expend less than $300,000 in federal funds from all sources and less than $300,000 in state funds during their fiscal year are not required to have an audit.~~]

§144.212. Auditor Qualifications.

(a) (No change.)

(b) The selected auditor must meet the requirements of the Government Auditing Standards (GAS) and be licensed in the state in which the audit is performed at the time the audit is performed.

(c) (No change.)

§144.213. Independent Audit Report Requirements.

(a) The audit report shall include the requirements found in:

(1) (No change.)

(2) Government Auditing Standards (GAS); [~~and~~]

(3) Uniform Grants Management Standards [~~the commission's contract(s), including any stipulations and amendments~~]; and

(4) the commission's contract(s), including any stipulations and amendments.

(b) In addition, the audit shall meet requirements of the following publications (issued by the American Institute of Certified Public Accountants), as applicable:

(1) Audits of Not-for-Profit Organizations [~~Audits of State and Local Governmental Units~~];

(2) Audits of State and Local Governmental Units [~~Audits of Certain Not-for-Profit Organizations~~];

(3) Audits of Colleges and Universities [~~Audits of Providers of Health Care Services~~];

(4) Audits of Providers of Health Care Services [~~Audits of Voluntary Health Care and Welfare Organizations~~]; [~~or~~]

(5) Audits of Certain Not-for-Profit Organizations; or [~~Audits of Colleges and Universities.~~]

(6) Audits of Voluntary Health Care and Welfare Organizations.

§144.214. Independent Audit Report Submission.

(a) The provider shall submit two copies of all required audit documentation to the commission, including:

(1) the audit report;

(2) any separately issued management letters;

(3) management responses as required in §144.215 of this title (relating to Corrective Action Plan); and

(4) the commission's Audit Report Submission Checklist.

(b) Audits for fiscal years beginning on or after July 1, 1998 shall be completed and submitted no later than nine months after the provider's fiscal year end. Audits for fiscal years beginning on or before June 30, 1998 must be completed and submitted no later than 13 months after the provider's fiscal year end.

§144.215. Corrective Action Plan.

(a) The provider shall prepare a response that includes a corrective action plan for each deficiency noted in the independent financial audit report and management letter.

(b)-(d) (No change.)

§144.216. Audit Report Desk Reviews Commission Review of Audit Report.

(a) After reviewing the audit, the commission will send the provider a [~~an initial~~] resolution letter requesting a response to any administrative findings or deficiencies.

(b)-(d) (No change.)

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

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40 TAC §144.202

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §144.202 concerning Program Oversight. This section contains the requirements for organization response. The repeal is proposed because the requirements in this section will be incorporated into other sections.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of the proposed repeals.

Ms. Bleier has also determined that for each year of the first five years the repeal is in effect the anticipated public benefit will more clarity for providers about what they must do in response to the various program oversight activities conducted or required by the commission. There will be no effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

The repeal is proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed repeals is the Texas Health and Safety Code, Chapter 461.

§144.202. Organization Response.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

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Mark Smock
Deputy for Finance and Administration
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Subchapter D. Organizational

40 TAC §§144.312, 144.313, 144.321, 144.322, 144.324, 144.325, 144.327

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§144.312, 144.313, 144.322, 144.324, and 144.325 and proposes new §144.321 and §144.327 concerning organizational requirements. These sections contain information regarding organizational structure, governing body and chief executive officer, policies and procedures, records, limiting barriers, complaints and reports, and standards of conduct.

These amendments and new sections are proposed to expand these rules to make them comparable to facility licensure standards (which apply only to treatment providers) so that prevention providers are held to the same organization standards as treatment providers; to replace the term executive director with chief executive officer; to require providers to maintain documentation signed by each employee that policies and procedures have been read and understood; to replace the term governing authority with governing body; to ensure that members of the governing body are aware of their responsibilities and liabilities as well as the program's target populations and their particular cultural needs; to specify the minimum requirements for and responsibilities of a chief executive officer; to establish requirements for policies and procedures; to clarify that providers must maintain current personnel documentation on each employee and to list the minimum items that must be included; to clarify the retention requirements for contract related records; to require a written policy prohibiting discrimination; to mandate that providers retain documentation of formal agreements and contracts to address identified problems with program service access by people with disabilities; to expand the requirements for handling complaints to include complaints from clients, participants and their families; to state that reports of abuse, neglect or exploitation must be made verbally to the commission's investigation department; and to establish standards of conduct for the program and its personnel.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be that prevention providers will be held to the same standards as treatment providers, which will result in better administration of prevention programs. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments and new sections.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If

you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments and new sections are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed amendments and new sections is the Texas Health and Safety Code, Chapter 461.

§144.312. Organizational Structure.

(a) (No change.)

(b) The provider shall maintain a current manual that includes all policies and procedures required by the commission.

(1) (No change.)

(2) Procedures shall be approved by the chief executive officer [~~director~~], reviewed annually, and revised as needed.

(3) The provider shall require each employee to read the policies and procedures applicable to the position and maintain documentation signed by the employee that the policies and procedures have been read and understood.

(4) (No change.)

§144.313. Governing Body and Chief Executive Officer [~~Authority~~].

(a) All entities shall have a governing body [~~authority~~] that is legally responsible for the integrity of the fiscal and programmatic management of the organization.

(b) The governing body [~~authority~~] shall be a separate business entity with legal authority to operate in the State of Texas [~~and shall not be a sole proprietor or partnership~~].

(c) Staff members, including the chief executive officer [~~director~~], of a public or nonprofit entity shall not serve on their employer's governing board.

(d) The governing body [~~authority~~] shall appoint a chief executive officer [~~person~~] to manage the day-to-day operations of the organization and ensure that the organization has the programmatic, managerial, and financial capability to ensure proper planning, management, and delivery of funded services.

(e) The governing body [~~authority~~] shall meet at least quarterly and maintain minutes that include:

(1) date, time, and place of the meeting;

(2) names of members present and absent; and

(3) summary of discussion and action taken.

(f) The governing body shall provide all members with information about the responsibilities and liabilities of the governing body and its individual members. [~~Members of the governing authority shall receive training on cultural sensitivity and awareness.~~]

(g) The governing body shall ensure that all of its members are familiar with the program's target population and sensitive to the needs of the different cultures represented.

(h) The chief executive officer director shall:

(1) have documented education and/or experience in financial, administrative, and personnel management, and other areas needed to manage the facility effectively;

(2) ensure compliance with applicable laws and rules:

(3) ensure that all staff are competent and trained;

(4) establish mechanisms to ensure quality of services; and

(5) maintain adequate financial records according to generally accepted accounting principles.

§144.321. Policies and Procedures.

(a) The provider shall operate according to policies and procedures that comply with all applicable commission rules.

(b) The governing body shall establish policies that comply with commission rules, and the chief executive officer shall use the policies to develop and implement all needed procedures.

(c) The policy and procedures manual shall be current, in compliance with current commission rules, individualized to the program, well organized, and easily accessible to all staff at all times.

(d) Within ten days of a policy or procedure change, the provider shall inform staff about any changes to the policy and procedure manual that are relevant to their job duties and document the notification. If training is needed, it shall be provided and documented within 60 days.

(e) The provider shall adopt and implement *TCADA Workplace and Education Guidelines for HIV and Other Communicable Diseases* in order to meet requirements as specified by the Americans with Disabilities Act, the Texas Health and Safety Code, Chapter 85, and standard precautions for infection control as outlined by The Centers for Disease Control and Prevention.

(f) The provider shall implement written policies and procedures to protect client/participant records and client/participant-identifying information from unauthorized disclosure in accordance with the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, Code of Federal Regulations, Title 42, Part 2.

§144.322. Records.

[~~(a) The provider shall protect client/participant records and client/participant-identifying information from unauthorized disclosure in accordance with the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, Code of Federal Regulations, Title 42, Part 2.~~]

(a) [~~(b)~~] The provider shall maintain current personnel documentation on each employee. Training records may be stored separately from the main personnel file, but shall be easily accessible upon request. Required documentation includes, as applicable [~~Personnel files shall contain~~]:

(1) a copy of the current job description signed by the employee;

(2) application or resume with documentation of required qualifications;

(3) documentation that required credentials were verified directly with the credentialing body;

(4) annual performance evaluations;

(5) personnel data that includes date hired, rate of pay, and documentation of all pay increases and bonuses:

(6) documentation of appropriate screening and/or background checks;

(7) signed documentation of initial and other required training; and

(8) records of any disciplinary actions.

(b) [(c)] The provider shall maintain all records relating to the contract for at least three years from the date the independent financial [final] audit [report] is due (when required) or would have been due (when not required) as stated in §144.214 of this title (relating to Independent Audit Report Submission). If any litigation, audit, or other action is in process at the end of three years, the records must be kept until the action is resolved. If a provider closes business operations, it shall ensure that records relating to the contract are securely stored and accessible for at least three years. The provider shall provide the commission with the name and address of the responsible party.

§144.324. Limiting Barriers.

(a) The provider shall implement and enforce a written policy prohibiting discrimination [not discriminate] against an individual or group based on race, religion, ethnicity, country of origin, age, disability (including mental illness), sexual orientation, or gender. The provider shall also ensure that no person or group of persons is restricted from receiving the same services or the same quality of services available to others.

(b) (No change.)

(c) The provider shall maintain documentation of formal agreements and contracts to address identified deficiencies in access to program services for people with disabilities.

§144.325. Complaints and Reports.

(a) Providers shall have written policy and procedures for handling complaints from clients, participants, and their families [of funded programs].

(b) (No change.)

(c) The provider shall verbally report all allegations of abuse, neglect, and exploitation to the commission's investigation department [commission in writing] within 24 hours, and submit documentation within two working days. The provider shall investigate the allegation, take appropriate action, and maintain documentation of the investigation and resulting actions.

(d) The provider shall not retaliate against anyone who reports a violation or cooperates during an investigation or related activity.

§144.327. Standards of Conduct.

(a) The program and all of its personnel shall:

(1) protect the health, safety, rights, and welfare of clients/participants;

(2) provide adequate services as described in the program description;

(3) comply with all applicable laws, regulations, policies, and procedures;

(4) maintain required licenses, permits, and credentials; and

(5) comply with professional and ethical codes of conduct.

(b) Neither the program nor any of its personnel shall:

(1) abuse, neglect, or exploit clients/participants;

(2) commit an illegal, unprofessional or unethical act;

(3) assist or knowingly allow another person to commit an illegal, unprofessional, or unethical act;

(4) knowingly provide false or misleading information;

(5) omit significant information from required reports and records or interfere with their preservation;

(6) retaliate against anyone who reports a violation or cooperates during a review, audit, inspection, investigation, hearing, or other related activity; or

(7) interfere with commission reviews, inspections, investigations, hearings, or related activities. This includes taking action to discourage or prevent someone else from cooperating with the activity.

(c) The program shall have a written policy on staff conduct that complies with this section.

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

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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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40 TAC §144.321

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §144.321 concerning organizational responsibilities. This section contains the requirements for HIV policies. The repeal is proposed because the requirements in this section will be incorporated into a new section that addresses all required policies.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of the proposed repeals.

Ms. Bleier has also determined that for each year of the first five years the repeal is in effect the anticipated public benefit will clear guidance about all required policies as they will be consolidated into one section. There will be no effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these

proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

The repeal is proposed the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed repeal is the Texas Health and Safety Code, Chapter 461.

§144.321. HIV Policies.

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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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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40 TAC §144.326

The Texas Commission on Alcohol and Drug Abuse proposes new §144.326 concerning organizational requirements. This section contains information regarding staffing.

This new section is proposed to establish minimum requirements related to staffing. This entire subchapter is being expanded to make these rules comparable to the facility licensure standards (which apply only to treatment providers). This expansion ensures that prevention providers are held to the same organization standards as treatment providers. Thus, this new section will ensure that prevention providers are held to the same staffing standards as treatment providers. There is one new requirement included in this new section which is that providers must obtain the results of a criminal background check for each staff person who has contact with adolescents and/or children.

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

Ms. Bleier has also determined that for each year of the first five years the rule is in effect the anticipated public benefit will be that prevention providers will be held to the same standards regarding staffing as treatment providers, which will result in more effective and better staffed prevention programs. There is no additional effect on small businesses. The only anticipated economic cost to comply with the new section is the cost of criminal background checks, which is estimated at $15.00 per staff person for programs that serve adolescents and/or children.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

This new section is proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new section is the Texas Health and Safety Code, Chapter 461.

§144.326. Staffing

(a) The provider shall have an adequate number of qualified staff to comply with commission rules, provide the services described in the program description, and protect the health, safety, and welfare of clients/participants.

(b) The program shall hire applicants who meet the minimum qualifications listed in the job description.

(c) The application or resume shall document required education, training, and related work experience.

(d) The facility shall develop and implement procedures for reviewing the background and suitability of any employee with access to clients/participants. The review shall be appropriate for each person's level of access and shall adequately protect clients/participants.

(e) The program shall obtain the results of a statewide criminal background check from the Department of Public Safety on all staff with access to adolescents or children.

(f) The facility shall ensure that staff are adequately trained and competent to perform job duties.

(g) Each employee shall complete initial training during the first seven calendar days of employment. The initial training shall include, as applicable:

(1) client/participant rights and complaint procedures;

(2) confidentiality of client/participant-identifying information;

(3) abuse, neglect, and exploitation (including reporting requirements);

(4) standards of conduct; and

(5) the individual's specific job duties.

(h) The program shall establish an annual staff training plan for employees based on the program design and identified staff needs. The plan must include annual cultural competency training for all employees.

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

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Subchapter E. Prevention and Intervention

40 TAC §§144.411–144.416, 144.441–144.447, 144.451–144.455, 144.457–144.460, 144.462

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§144.411-144.416 and 144.441-144.447 and proposes new §§144.451-144.455, 144.457-144.460 and 144.462 concerning Prevention and Intervention. These sections contain information regarding program design and implementation, program self-evaluation, performance and activity measures, performance measure review, participant rights, smoking policies, information dissemination, prevention education and skills training, alternatives, problem identification and referral, community-based process, environmental and social policy, intervention services, youth prevention programs, youth intervention programs, community coalitions, prevention training services, prevention resource centers, pregnant postpartum prevention programs, pregnant postpartum intervention programs, other special prevention programs, HIV early intervention services, and HIV outreach services.

These amendments and new sections are proposed to reorganize the rules to present them in more logical order; to clarify the process and requirements for program design and implementation; to describe the requirements for self-evaluation of programs; to specify that performance and activity measures must be defined for both the primary and secondary target populations; to refine the performance measure review process; to clarify that participant rights apply to participants in both prevention and intervention programs; to outline the additional rights of participants in intervention programs; to require programs to have written smoking policies and to prohibit all adults from using tobacco products in the presence of program participants; to clarify the requirements related to information dissemination; to refine the requirements related to prevention education and skills training; to more fully describe the strategy of alternatives; to include identification of risk factors for HIV and sexually transmitted diseases during the screening process; to expand the requirements related to follow-up in the problem identification and referral strategy; to present the community-based process in a more organized and detailed manner; to more fully describe intervention services and present the requirements related to these services in a logical and organized format; to add requirements for each program type that may be funded as a prevention or intervention program; and to make grammatical changes to improve readability and understanding.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be a better understanding of the requirements for prevention and intervention programs and more clarity of the various types of strategies and programs that may be implemented. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments and new sections.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments and new sections are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed amendments and new sections is the Texas Health and Safety Code, Chapter 461.

§144.411. Program Design and Implementation.

(a) The provider shall determine what population the program is designed to serve: universal, selective, indicated, or a combination. [~~The program design shall be based on a logical, conceptually sound framework with the intended result of preventing alcohol, tobacco, and other drug problems. The design should take into consideration current research and evaluation data and effectiveness of comparable programs relative to the needs of the target population.~~]

(1) Universal programs reach the general population (such as all students in a school).

(2) Selective programs target a subset of the general population which is at high risk for substance abuse (such as children of drug users).

(3) Indicated programs are designed for those who may already be experimenting with drugs or who exhibit other problem-related behaviors.

(4) Combination programs provide a range of services for a specific community service setting.

(b) The program shall identify and describe the primary and secondary target populations including specific information about: [~~The program shall develop a written plan for the contract period. The plan shall initially be developed as part of the application process and revised annually on the basis of needs data and results of self-evaluation.~~]

(1) age, gender, and ethnicity;

(2) risk and protective factors;

(3) patterns of substance use;

(4) social and cultural characteristics;

(5) knowledge, beliefs, values, and attitudes; and

(6) needs.

(c) The program shall identify long-range goals which: [~~The provider shall determine what population the program is designed to serve: universal, selective, indicated, or a combination.~~]

(1) address identified risks, needs and/or problems of the primary and secondary target populations; [~~Universal programs reach the general population (such as all students in a school).~~]

(2) are designed to enhance protective factors; [~~Selective programs target a subset of the general population which is at high risk for substance abuse (such as children of drug users).~~]

(3) clearly describe behavioral and/or societal changes to be achieved; and [~~Indicated programs are designed for those who may already be experimenting with drugs or who exhibit other problem-related behaviors.~~]

(4) are realistic in relation to available resources.

(d) The program shall establish objectives for each contract period that are linked to the goals. Objectives must: [~~The program shall identify and describe the target population including specific information about:~~]

(1) be realistic, outcome oriented, measurable, and time-specific; [~~age, gender, and ethnicity;~~]

(2) include performance and activity measures required in the contract; and [~~risk and protective factors;~~]

(3) address specific family strategies, as applicable. [~~patterns of substance use;~~]

[~~(4) social and cultural characteristics;~~]

[~~(5) knowledge, beliefs, values, and attitudes; and~~]

[~~(6) needs.~~]

(e) The program design shall be based on a logical, conceptually sound framework to connect the prevention or intervention effort with the intended result of preventing alcohol, tobacco, and other drug problems. The program shall gather and use reliable evidence of effectiveness from comparable programs to select and guide the program design. The program shall use results that come from sound studies to assess potential effectiveness of the program design relative to the needs of the target population. [~~The program shall identify long-range goals which:~~]

[~~(1) address identified risks, needs and/or problems;~~]

[~~(2) are designed to enhance protective factors;~~]

[~~(3) clearly describe behavioral and/or societal changes to be achieved; and~~]

[~~(4) ensure adequate availability of resources to accomplish identified goals.~~]

(f) In order to carry out the program design, the program shall incorporate a combination of some or all CSAP's six prevention strategies (information dissemination, prevention education and skills training, alternative activities, problem identification and referral, community-based process, and environmental and social policy). All Youth Prevention Programs (YPP) and Youth Prevention Intervention (YPI) Programs must at a minimum conduct prevention education and skills training as a core strategy. Each strategy and activity must: [~~The program shall establish objectives for each contract period that are linked to the goals. Objectives must:~~]

(1) relate directly to program goals and objectives; and [~~be realistic, measurable, and time-specific; and~~]

(2) address identified needs. [~~include performance and activity measures required in the contract.~~]

(g) The program shall be designed to build on and support related prevention and intervention efforts in the community. The program shall secure and maintain the support of key decision makers and leaders, and shall establish formal linkages and coordinate with other community resources. [~~The program design shall include key strategies and activities used to achieve program goals and objectives. Each strategy and activity must:~~]

[~~(1) relate directly to program goals and objectives;~~]

[~~(2) address identified needs;~~]

[~~(3) be of sufficient time, intensity, and duration to produce intended results; and~~]

[~~(4) be appropriate for the target population. The program design, content, communications, and materials shall be:~~]

[~~(A) available in the primary language of the target population; and~~]

[~~(B) appropriate to the literacy level, gender, race, ethnicity, sexual orientation, age, and developmental level of the target population.~~]

(h) The program shall be appropriately structured to implement the program design. The prevention effort shall be consistent with the availability of personnel, resources, and realistic opportunities for implementation. [~~The program shall be designed to build on and support related prevention and intervention efforts in the community. The program shall establish linkages and coordinate with other community resources.~~]

(i) The program design, content, communications, and materials shall: [~~The program shall establish an annual staff training plan for employees based on the program design and identified staff needs. The plan must include cultural awareness and sensitivity training for all employees.~~]

(1) be available in the primary language of the target population;

(2) be appropriate to the literacy level, gender, race, ethnicity, sexual orientation, age, and developmental level of the target population; and

(3) recognize the cultural identification (context) of the family unit.

(j) The program design shall be delivered at an appropriate time with sufficient intensity and applied over an appropriate duration so that results can be sustained.

§144.412. Program Self-Evaluation.

(a) The program shall perform self-evaluation to verify, document, and quantify program activities and effectiveness unless exempted through an executive order.

(b) Programs shall conduct evaluation activities using the Prevention Plus III format unless the commission has approved an alternative model. [~~Programs required to complete the self-evaluation include Prevention, Intervention, Core Council Services,~~

HIV Outreach Services, Infant Primary Prevention and Intervention Programs, and Compulsive Gambling.]

(c) For programs in the first year of funding from the commission, the evaluation process must include: [Programs shall conduct evaluation activities using the Prevention Plus III format unless the commission has approved an alternative model.]

(1) identification of goals and objectives (PP III Step 1);

(2) assessment of the service delivery process (PP III Step 2); and

(3) a plan for assessment of the program outcomes (plan for PP III Step 3).

(d) In subsequent funding years, the evaluation must include: [For programs in the first year of funding from the commission, the evaluation process must include:]

(1) identification of goals and objectives (PP III Step 1);

(2) assessment of the service delivery process (PP III Step 2); and

(3) implementation of the assessment of the program outcomes (PP III Step 3). [a plan for assessment of the program outcomes (plan for PP III Step 3).]

(e) The program shall submit a written evaluation report using the format specified by the commission. The provider must submit the report at the end of each contract period, no later than September 30th unless otherwise stipulated in the contract. [In subsequent funding years, the evaluation must include:]

[(1) identification of goals and objectives (PP III Step 1);]

[(2) assessment of the service delivery process (PP III Step 2); and]

[(3) implementation of the assessment of the program outcomes (PP III Step 3).]

(f) The program shall use information gained from the annual self-evaluation to make appropriate changes to the program and the staff training plan. Any change requiring commission approval must be made through a contract amendment as described in §144.103 of this title (relating to Amendments). [The program shall submit a written evaluation report using the format specified by the commission. The provider must submit the report at the end of each contract period, no later than September 30th unless otherwise stipulated in the contract.]

[(g) The program shall use information gained from the annual self-evaluation to revise the program plan and staff training plan.]

§144.413. Performance and Activity Measures.

(a) (No change.)

(b) The program shall track and appropriately document the performance and activity measures defined for the primary and secondary target populations [population] and the services provided. The program must maintain adequate documentation to substantiate the reported numbers.

(c) (No change.)

§144.414. Performance Measure Review.

(a) (No change.)

(b) The commission shall review actual performance on key measures [at least twice each fiscal year] and notify the program in writing if the program failed to achieve the expected level of performance.

(c)-(d) (No change.)

[(e) If the program fails to satisfactorily resolve any performance measure deficiencies as noted in the commission's review, the commission will implement further corrective action and may impose one or more of the following sanctions:]

[(1) designation as a high-risk provider;]

[(2) suspension of payments;]

[(3) one-time decrease in the contract amount for the fiscal year;]

[(4) permanent decrease in the contract amount; or]

[(5) termination of the contract.]

§144.415. Participant Rights.

(a) Each provider shall develop and implement a policy and age-appropriate procedures to protect the rights of children, families, and adults participating in a prevention or intervention program.

(b) (No change.)

(c) Participants receiving individualized services in an intervention program also have the right to refuse or accept services after being informed of services and responsibilities, including: [Participants in an intervention program also have the right to:]

(1) program goals and objectives; [a humane environment that provides reasonable protection from harm];

(2) rules and regulations; and [be informed of the program rules and regulations before participation; and]

(3) participant rights. [accept or refuse services after being informed of services and responsibilities.]

(d) Programs that provide services to identified individuals shall maintain the confidentiality of participant-identifying information as required by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, Code of Federal Regulations, Title 42, Part 2. [When participants receive individualized services in an intervention program, the provider shall inform participants and consenters (if applicable) about:]

[(1) program goals and objectives;]

[(2) rules and regulations; and]

[(3) participant rights.]

[(e) Programs that provide services to identified individuals shall maintain the confidentiality of participant-identifying information as required by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, Code of Federal Regulations, Title 42, Part 2.]

§144.416. Smoking Policies

(a)-(c) (No change.)

(d) Staff and other adults shall not use tobacco products in the presence of participants.

(e) (No change.)

(f) The program shall have a written smoking policy that complies with this section.

§144.441. Information Dissemination.

(a) Each program that provides activities within this strategy [~~to individuals over the age of nine~~] shall disseminate information about these topics as appropriate for the target population:

(1) the nature and extent of alcohol, tobacco, and other drug use, abuse, and addiction;

(2) HIV infection, tuberculosis, hepatitis, and sexually transmitted diseases; and/or [~~and~~]

(3) information about available services and resources.

(b)-(c) (No change.)

(d) The program shall document the number of persons receiving written information/literature. For presentations, documentation [~~Documentation~~] shall include, as applicable:

(1) date, time, and duration of activity;

(2) location of activity;

(3) staff/volunteers conducting activity;

(4) purpose and goal of activity; and

(5) number of participants. [~~; and~~]

[~~(6) pieces of literature/written information distributed.~~]

§144.442. Prevention Education and Skills Training.

(a) (No change.)

(b) The activities must include extensive interaction [~~where information is exchanged~~] between the leader and the participants.

(c) Activities shall be conducted according to [~~based on~~] a written, time-specific curriculum which is based on proven, effective principles [~~or outline approved by the commission~~].

(d) Each program that provides activities within this strategy must help participants gain knowledge and/or skills needed to access assistance or help with a problem.

(e) (No change.)

§144.443. Alternatives [~~Alternative Activities~~].

(a) Each program that provides activities within this strategy shall provide alternative activities designed to assist participants in:

(1) mastering [~~help participants master~~] new skills [~~and develop relationships~~] ; [~~and~~]

(2) developing/maintaining relationships; [~~offset attraction to and fill needs met by alcohol, tobacco, and other drug use.~~]

(3) bonding with peers, family, school , and community;

(4) building cultural understanding, and honoring diversity; and

(5) identifying activities which offset the attraction to fill needs met by alcohol, tobacco and other drug use.

(b) Alternative activities should be planned and conducted to complement the exisiting program design and proposed outcomes [~~Activities must be selected to meet the identified needs of the participants~~].

(c) (No change.)

§144.444. Problem Identification and Referral.

(a) General requirements. Each program that provides activities within this strategy shall provide problem identification and referral services to ensure access to the appropriate level and type of services needed by participants and their families. Required components include screening, referral, and follow-up.

(b) Screening. The screening process shall be designed to identify warning signs for alcohol, tobacco, and/or other drug abuse [~~and HIV risk factors, as deemed appropriate~~]. The screening shall also identify STD/HIV risk factors as appropriate.

(c) Referral. The program shall identify needs that cannot be met by the program and help the participant access appropriate support systems and community resources. The program shall maintain a current list of referral resources , including other services provided by the organization.

(d) Follow-up. The program shall conduct and document follow-up on referrals whenever possible. Unsuccessful attempts at follow-up shall also be documented.

(e) Documentation. The program shall maintain documentation of each screening which includes:

(1) date of the screening;

(2) zipcode [~~name and address~~] of the individual screened;

(3) demographics of the individual screened [~~referrals made; and~~]

(4) referrals made [~~any follow-up contacts~~]; and

(5) any follow-up contacts.

§144.445. Community-Based Process.

(a) Each program that provides activities within this strategy shall work with other service providers, organizations, individuals, and families to promote substance abuse services and improve the community's ability to prevent substance abuse and related problems. [~~Prevention programs implementing community-based process shall meet the following standards.~~]

[~~(1) The program must work with other service providers, organizations, and individuals to promote substance abuse services and improve the community's ability to prevent substance abuse and related problems.~~]

[~~(2) The program must use existing community services and resources effectively to enhance the prevention program.~~]

[~~(3) The program must establish linkages with other service providers to build a continuum of substance abuse services in the community.~~]

[~~(4) To the extent possible and appropriate, the program must involve family members in the prevention program and coordinate appropriate services for them.~~]

[~~(5) When the program coordinates services with another provider, there must be a written letter of agreement that includes:~~]

[~~(A) names of the providers entering into the agreement;~~]

[~~(B) services or activities each provider will provide;~~]

[~~(C) signatures of authorized representatives; and~~]

[~~(D) dates of action and expiration.~~]

[~~(6) Documentation of community process activities shall include, as applicable:~~]

[~~(A) date, time, and duration of activity;~~]

[~~(B) key contact persons/providers involved;~~]

[(C) purpose and goal of activity;]

[(D) further action steps needed; and]

[(E) action or change achieved.]

(b) The program must use existing community services and resources effectively to enhance the prevention program.

(c) The program must establish formal linkages with other service providers to build a continuum of substance abuse services in the community. Where gaps exist, the program shall document active participation in collaborations to support community resource development.

(d) When the program coordinates services with another provider, there must be a written letter of agreement that is renewed annually and includes:

(1) names of the providers entering into the agreement;

(2) services or activities each provider will provide;

(3) signatures of authorized representatives; and

(4) dates of action and expiration.

(e) Documentation of community process activities shall include, as applicable:

(1) date, time, and duration of activity;

(2) key contact persons/providers involved;

(3) purpose and goal of activity;

(4) further action steps needed; and

(5) action or change achieved.

§144.446. Environmental and Social Policy.

(a) Each program that provides activities within this strategy shall take steps to influence the incidence and prevalence of substance abuse through:

(1) legal and regulatory strategies; or

(2) service and action-oriented activities.

(b)-(d) (No change.)

§144.447. Intervention [Additional] Services.

(a) A program may offer intervention [additional] services to meet the needs of individual participants who do not meet DSM-IV criteria for abuse or dependence, but are showing early warning signs of substance abuse and other problem behaviors associated with substance abuse. Family members may also be involved in intervention services [and their families, such as intervention counseling, crisis intervention, family case management, and support group opportunities.]

[(1) Intervention counseling shall be conducted through confidential face-to-face contacts with participants and/or family members.]

[(2) The program shall assess the individual's or family's needs and develop a service plan to address the identified needs and the services to be provided.]

[(3) The program shall document participation and follow-through, including any changes in the participant's or family's status.]

[(4) The program shall provide information and referrals for participant and/or family needs that cannot be met by the program.]

(b) The program shall determine the needs of the participant (and family members) in a culturally appropriate, face-to-face assessment. The assessment shall gather information to identify the participant's risk and protective factors in five domains: individual, family, school, peer relationships, and community.

(1) Information about the individual shall include:

(A) age, gender, culture and ethnicity;

(B) individual assets;

(C) ATOD use; and

(D) legal issues.

(2) Information about the family shall include:

(A) structure; and

(B) functioning.

(3) School information shall include:

(A) literacy level;

(B) academic performance;

(C) social functioning; and

(D) behavioral functioning issues.

(4) Information about peer relationships shall include:

(A) ATOD use;

(B) gang or club involvement; and

(C) legal issues.

(5) Information about the community shall include:

(A) economic status;

(B) general environment; and

(C) criminal activity.

(c) The counselor and the participant (and family members, if appropriate) shall develop a service plan to address identified needs. The service plan shall include:

(1) behavioral goals;

(2) timelines for completion; and

(3) recommended services/interventions.

(d) Intervention counseling shall be conducted through confidential face-to-face contacts with participants and/or family members. All intervention counseling sessions shall be documented in the participant's service record, including a summary of the session and progress toward or away from identified goals.

(e) The program shall provide information, referrals, and follow-up for participant and/or family needs that cannot be met by the program. These referrals must be documented in the service record.

(f) The program may also provide crisis intervention, family case management, and support group opportunities.

(g) When intervention services are completed, the counselor shall file an exit summary in the service record which includes a description of the results achieved and participant status at closure.

§144.451. Youth Prevention Programs

(a) The goal of youth prevention programs shall be to preclude the onset of the illegal use of alcohol, tobacco and other

drugs by youth and to foster the development of social and physical environments that facilitate healthy, drug-free lifestyles.

(b) Youth prevention programs shall offer universal and/or selective prevention strategies to youth and their families.

§144.452. Youth Intervention Programs

(a) The goal of youth intervention programs shall be to interrupt the illegal use of alcohol, tobacco and other drugs by youth and to break the cycle of harmful use of legal substances and all use of illegal substances by adults in order to halt the progression and escalation of use, abuse, and related problems.

(b) Youth intervention programs shall offer indicated prevention strategies to youth and their families.

§144.453. Community Coalitions.

(a) Community coalitions shall implement strategies designed to accomplish the following goals:

(1) to reduce substance use and abuse among youth in each community served;

(2) to strengthen collaboration in communities and support the existing community-based prevention, intervention, and treatment infrastructure; and

(3) to increase citizen participation and greater commitment among all sectors of the community toward reducing substance use and abuse.

(b) Community coalitions shall include (or document attempts to recruit) one or more representatives from each of these areas:

(1) youth;

(2) parents;

(3) businesses;

(4) media;

(5) schools;

(6) community organizations serving youth;

(7) faith-based groups;

(8) civic and/or volunteer groups;

(9) health care professionals;

(10) state, local, or tribal governmental agencies with expertise in substance abuse; and

(11) other organizations involved in reducing substance abuse.

(c) Each program shall submit a quarterly report that includes a current list of all members in the coalition and a summary of the past quarter's activities.

(d) Community coalitions shall not provide or subcontract for the provision of individual direct services - prevention education and skills training, alternative activities or problem identification and referral - as described in §144.442 of this title (relating to Prevention Education and Skills Training.

§144.454. Prevention Training Services

(a) Prevention training services are designed to strengthen and expand a prevention infrastructure through the provision of statewide training and technical assistance. The program shall provide these services by dissemination of information on the latest prevention technology, research and best practice approaches to encourage and support implementation of research-based prevention programs.

(b) The program shall submit a quarterly program narrative report. The report shall address the following:

(1) trainings;

(2) program administration and staffing;

(3) marketing efforts and collaboration;

(4) follow-up/technical assistance; and

(5) training schedule.

§144.455. Prevention Resource Centers.

(a) The goal of each Prevention Resource Center shall be to increase the effectiveness and visibility of prevention of alcohol, tobacco and other drug use and abuse within the region it is funded to serve through information dissemination, community education, and identification of training resources and best practices in prevention.

(b) Each Prevention Resource Center shall provide universal prevention strategies to the region it serves.

(c) Identified target groups shall include at a minimum: prevention professionals and volunteers; community leaders; teachers; school counselors and educational administrators; children and youth; parents and families; communities at large; local news media within the region served; and other persons in need of training in the area of alcohol, tobacco and other drugs.

(d) The following services are required of all funded Prevention Resource Centers:

(1) prevention needs assessment and resource identification;

(2) prevention information marketing efforts;

(3) prevention training and referral to resources;

(4) prevention materials clearinghouse;

(5) regional coordination/networking; and

(6) regional prevention resource center web site and toll-free number.

(e) Each program shall submit a monthly report detailing the past month's efforts in the required Prevention Resource Center services categories.

§144.457. Pregnant Postpartum Prevention Programs.

(a) The goal of pregnant postpartum prevention programs shall be to preclude the onset of the use of alcohol, tobacco, and other drugs by pregnant and postpartum women and to foster the development of social and physical environments that facilitate healthy, drug-free lifestyles for the women and their children.

(b) Pregnant postpartum prevention programs shall offer universal and/or selective prevention strategies to address the comprehensive service needs and issues of non-using pregnant and postpartum women who are at risk for substance abuse and their families.

(c) Each program shall submit a quarterly narrative report.

§144.458. Pregnant Postpartum Intervention Programs

(a) The goal of pregnant postpartum intervention programs shall be to intervene on the substance use or abuse of pregnant and postpartum women and to reduce the incidence of drug exposure of their unborn, newborn, and/or young children .

(b) Pregnant postpartum intervention programs shall provide indicated intervention strategies to pregnant and postpartum substance using or abusing women.

(c) Each program shall submit a quarterly narrative report.

§144.459. Other Special Prevention Programs.

(a) Special prevention programs are designed to meet the needs of specific target populations.

(b) Each program shall establish key performance measures required and negotiated by the commission according to the specific program design.

§144.460. HIV Early Intervention Services (HEI).

(a) Programs receiving HIV early intervention funds shall provide comprehensive HIV services to HIV infected persons with substance abuse problems and/or persons at risk of being infected as a result of substance abuse related activity and their families and/or significant others. HIV early intervention services shall include the following components.

(1) Access to HIV antibody counseling and testing. HEI staff who perform HIV antibody counseling and testing must be currently registered as a Prevention Counseling and Partner Elicitation (PCPE) counselor with the Texas Department of Health.

(2) Access to screening for tuberculosis and sexually transmitted diseases.

(3) Case management to identify and access appropriate medical and social services for HIV infected clients and their families and/or significant others.

(A) Medical services for HI- infected clients include laboratory analyses to monitor HIV status and ensure access to prescribed medication and/or alternative treatments used to slow down or prevent HIV disease progression. Services may also include clinical supervision as needed to carry out medical service functions.

(B) Social services for HIV infected clients and their families and/or their significant others may include but are not limited to: legal counseling, mental health counseling, child care, child welfare and family services, social services advocacy, transportation to treatment programs or HIV-related appointments, housing referrals, support groups, health and wellness education (including education and counseling about medication scheduling and adherence), and nutrition counseling.

(b) Case management must be documented by the use of individualized service plans which address and prioritize client needs identified through assessment.

(1) Service plans shall be completed within two weeks of a client's entrance into HEI services.

(2) Client and case manager participation in the service plan process is required and is documented by signature of both parties on the plan.

(3) Objectives and strategies stated in the service plan shall be specific and measurable.

(4) Progress on service plan goals and objectives shall be documented in client progress notes.

(5) Service plans shall be updated based upon information from the progress notes.

(c) HIV early intervention services shall be provided only if the client voluntarily gives informed consent. Receiving these services shall not be required as a condition of receiving substance abuse treatment or other services.

(d) Programs shall establish linkages with a comprehensive community resource network of related health, social service providers, and community or regional planning groups.

(1) Networks shall be documented by written service agreements that are specific as to activities performed by the referral agency and those performed by the commission-funded provider.

(2) Service agreements shall be signed by responsible parties of both agencies. Letters from planning councils/consortia/ groups chairs or co-chairs which describe the commission-funded provider as being an active member or participant is sufficient documentation for this requirement.

(3) Each service agreement or planning group letter shall be renewed at the beginning of each fiscal year.

(e) Each HEI program shall submit annual goals relating to anticipated numbers of persons to be served during the course of the contract period. Goals shall address the following key performance measures:

(1) Referral/follow-up: The percentage of client referrals made by the HIV Early Intervention program which resulted in an initial contact of service provider by the client within 1 to 14 days during the report period.

(2) Clients receiving substance abuse services: The percentage of clients who receive substance abuse services while enrolled as a client of HIV early intervention services.

(f) Each HEI program shall submit annual and quarterly reports.

§144.462. HIV Outreach Services.

(a) HIV outreach programs target substance abusers who may or may not be seeking treatment and provide them with information, activities, referrals, and education directed toward informing drug users about the relationship between drug use (especially injecting drug activity) and communicable diseases.

(b) HIV outreach service programs shall use outreach models that are scientifically sound. Unless the commission approves another model in writing, programs shall use one or more of the following models:

(1) *The NIDA Standard Intervention Model for Injection Drug Users: Intervention Manual,* National AIDS Demonstration Research (NADR) Program, National Institute on Drug Abuse, February, 1992;

(2) *AIDS Intervention Program for Injecting Drug Users: Intervention Manual*, Rhodes, R., Humfleet, G.L., et al., February, 1992; and

(3) *The Indigenous Leader Model: Intervention Manual*, Wiebel, W. and Levin, L.B., February 1992.

(c) HIV outreach services shall be delivered at times and locations that meet the needs of the target population.

(1) Outreach workers who perform HIV antibody test counseling must be currently registered as Prevention Counseling and Partner Elicitation (PCPE) counselors with the Texas Department of Health. PCPE counseling must be performed as a one-to-one activity in a safe and confidentially secure environment.

(2) Commission-funded HIV outreach programs shall refer all persons found to be HIV-infected to commission-funded HIV Early Intervention programs.

(3) Written procedures shall effectively secure confidentiality of individuals who are identified through outreach activities as HIV infected or at risk for HIV.

(d) HIV outreach programs shall establish linkages with a comprehensive community resource network of related health, social service providers and community or regional planning groups.

(1) Service agreements shall outline services and activities performed by each agency, and include signatures from responsible parties of each program. Letters from planning council/consortia chairs or co-chairs which describe the commission funded provider as an active member or participant is sufficient documentation for this requirement.

(2) Each service agreement or planning group letter shall be renewed at the beginning of each fiscal year.

(e) HIV outreach programs shall report to the commission monthly, quarterly and annually.

(1) Monthly reports shall be submitted electronically through the commission's web-based computer system and will include data on key performance measures and demographics.

(2) Quarterly documents will report street activities that include a narrative describing observations or current trends in drug activity, barriers and/or successful strategies used when providing outreach services to the target population.

(3) Program self-evaluation is required and shall consist of a report generated annually by ongoing program work using the Prevention Plus III process.

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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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349–6733

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40 TAC §144.417

The Texas Commission on Alcohol and Drug Abuse proposes new §144.417 concerning Prevention and Intervention. This section contains information regarding staff training.

This new section is proposed to establish requirements for training the staff of prevention and intervention programs, including training during the first six months of hire and annually thereafter.

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

Ms. Bleier has also determined that for each year of the first five years the rule is in effect the anticipated public benefit will be better and more consistently trained prevention and intervention program staff. There is no additional effect on small businesses. The anticipated economic cost to persons required to comply with the proposed new section will vary for each provider. It will depend upon their present training practices and the methods used to implement these new requirements. It is estimated that the cost could be up to $800 per year for each provider.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

This new section is proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new section is the Texas Health and Safety Code, Chapter 461.

§144.417. Staff Training

(a) During the first six months of employment, all direct service prevention staff shall receive a total of eight hours of training (or document eight hours of equivalent training) in the following areas:

(1) cultural competency;

(2) risk and protective factors/ building resiliency; and

(3) child development and/or adolescent development, as appropriate.

(b) Specific training in the curriculum implemented for Prevention Education/Skills Training before facilitating the curriculum independently.

(c) In subsequent years, all direct services prevention staff shall receive eight hours prevention training related to the program design.

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

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40 TAC §§144.431–144.435

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices

of the Texas Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§144.431-144.435 concerning Prevention and Intervention. These sections contain the requirements for HIV early intervention services, HIV outreach services, prevention resources centers, infant primary prevention and intervention programs, and core council services. The repeals are proposed because this entire subchapter has been reorganized to present the rules in a more logical order. The requirements of these sections are incorporated into new sections that are being proposed concurrently.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of the proposed repeals.

Ms. Bleier has also determined that for each year of the first five years the repeals are in effect the anticipated public benefit will that the rules will be easier to find as they are presented in more logical order. There will be no effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

The repeals are proposed the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed repeals is the Texas Health and Safety Code, Chapter 461.

§144.431. HIV Early Intervention Services.

§144.432. HIV Outreach Services.

§144.433. Prevention Resource Centers.

§144.434. Infant Primary Prevention and Intervention Programs.

§144.435. Core Council Services.

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

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40 TAC §144.456

The Texas Commission on Alcohol and Drug Abuse proposes new §144.456 concerning Prevention and Intervention. This section contains information regarding core council services.

This new section is proposed because this section was reorganized to present the information in a more logical order and to implement a new requirement that Core Council service providers must render crisis intervention services.

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

Ms. Bleier has also determined that for each year of the first five years the rule is in effect the anticipated public benefit will be more clarity about core council services and their role in prevention and intervention as well as the provision of crisis intervention services to the public. There is no additional effect on small businesses. The anticipated economic cost to persons required to comply with the proposed new section will vary depending on current service and equipment. It is estimated that it could cost up to $1,000 per year.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

This new section is proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new section is the Texas Health and Safety Code, Chapter 461.

§144.456. Core Council Services

(a) Core council service providers are community-based organizations that provide alcohol, tobacco and other drug prevention and intervention services to the community at large in their identified catchment area. Core council service providers conduct a variety of services aimed to reduce use and abuse of ATOD in the targeted community(ies) including information, referral and placement services.

(b) Core council services programs shall offer universal, selective and indicated strategies to individuals, families, and communities within the service area defined in the contract.

(c) Minimum core council services shall include the following:

(1) Information dissemination shall be provided for the purposes of awareness and case finding in the community.

(2) Problem identification and referral shall be provided for the purpose of the identification of appropriate treatment needs through screening, referral, placement and follow-up.

(3) Crisis intervention services shall be provided for the purpose of providing immediate response to individuals and/or families in crisis who may call or present themselves in need of core council services.

(A) Core council service programs shall establish an avenue for a person in crisis to speak with a trained counselor or trained volunteer within one hour of the initial call received during and after normal business hours.

(B) Core council service programs shall develop written policies and procedures for crisis intervention services during and after normal business hours.

(C) Core council service programs shall provide training annually on crisis telephone call policies and procedures for all employees who answer (or may answer) the telephone during or after normal business hours.

(4) Minors and tobacco activities shall be provided for the purpose of reducing minors' access to tobacco products throughout the catchment area served.

(5) Community-based process shall be provided for the purpose of enhancing the ability of the community to more effectively provide substance abuse services.

(d) Core council services may include assessment for treatment as described in §144.448 of this title (relating to Assessment for Treatment). Core council service programs conducting assessments for treatment shall maintain written agreements with referral sources/ treatment providers to a. identify assessment roles in order to minimize duplicate efforts in conducting treatment assessments.

(e) Core council service providers shall not provide intervention counseling.

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

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Subchapter F. Treatment

40 TAC §§144.511, 144.512, 144.521-144.526, 144.531, 144.541, 144.543, 144.545, 144.551-144.554

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§144.511, 144.512, 144.521-144.525, 144.531, 144.541, 144.543, 144.545, and 144.551-144.554 and proposes new §144.526 concerning Treatment. These sections contain information regarding program design and implementation, self evaluation, client eligibility, priority populations, capacity management, facility capacity system, interim services for priority populations, length of stay guidelines, admission, specialized treatment services for females, pharmacotherapy services, family services, performance measure review, select performance measure definitions, client billings and client data systems (CDS) forms.

These amendments and new section are proposed to provide more guidance about the use of data, research and studies in program design; to describe the self evaluation process and how to use the resulting information; to clarify how to determine an adolescent's ability to pay; to add veterans to the list of priority populations (required by new legislation); to require providers to implement a marketing/outreach plan that specifically targets priority populations; to add requirements regarding capacity management, particularly for certain populations; to specify that programs must use the state's facility capacity management system to facilitate prompt, appropriate placements; to clarify the procedures to be used by treatment programs to report available capacity and waiting list information; to describe required interim services; to incorporate length of stay guidelines in the rules; to fully describe the admission process and to ensure that admission criteria will not automatically exclude certain individuals; to clarify what is required of programs that serve pregnant adult or adolescent females and adult or adolescent females with dependent children; to expand the requirements of pharmacotherapy programs; to fully describe family services, including purpose, potential recipients, reimbursable services, acceptable providers, and required documentation; to update the performance measure review process; to clarify performance measure definitions; to specify which clients are to be reflected on the monthly client billings; to revise the description of the billing system; to update references; and to make grammatical changes that enhance readability and understanding.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be a better understanding of these requirements and, as a result, more effective and efficient treatment programs for those who are chemically dependent. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments and new section.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments and new section are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed amendments and new section is the Texas Health and Safety Code, Chapter 461.

§144.511. Program Design and Implementation.

(a) The program design must be based on a logical, conceptually sound framework with the intended result of reducing alcohol, tobacco, and other drug problems. The program shall gather and use reliable evidence of effectiveness from comparable programs to select and guide the program design. The program shall use results that come from sound studies to assess potential effectiveness of the program design related to the needs of the target population. [~~The design should take into consideration current research and evaluation data and effectiveness of comparable programs relative to the needs of the target population.~~]

(b)-(d) (No change.)

(e) The program shall establish objectives for each contract period that are linked to the long range goals. Objectives must:

(1) be realistic, outcome-oriented, measurable, and time-specific; and

(2) (No change.)

(f) (No change.)

[~~(g) The program must also develop and implement an annual plan to provide employees with training and continuing education in the program's services. The plan must include cultural awareness and sensitivity training for all employees.~~]

§144.512. Self Evaluation.

(a) Each program shall develop and implement a system that makes use of data to monitor and evaluate the quality, efficiency, and effectiveness of its program(s) [~~, and then use the data and results to make appropriate program adjustments~~]. The program shall use this system to revise the program plan and make appropriate program adjustments. Any change requiring commission approval must be made through a contract amendment as described in §144.103 of this title (relating to Amendments).

(b) The system shall identify program strengths and problem areas, develop necessary program adjustments, and ensure the implementation of these adjustments. [~~evaluate progress, develop and take corrective actions, and monitor and evaluate the results of corrective actions taken.~~]

(c) (No change.)

(d) The program shall also document:

(1) identified program strengths and problem areas;

(2) resulting program adjustment to be made [~~evaluated progress~~];

(3) the implementation of these adjustments [~~corrective actions taken~~]; and

(4) the results of the self-evaluation system corrective actions taken.

[~~(e) The program shall use information gained from the annual self-evaluation to revise the program plan and staff training plan.~~]

§144.521. Client Eligibility.

(a)-(c) (No change.)

(d) For adolescents, ability to pay shall be determined by parental or family income unless: [~~Commission funds may be used to provide treatment for any adolescent client, regardless of ability to pay.~~]

(1) the adolescent applies for treatment without parental knowledge; and

(2) the adolescent refuses to consent to parental notification.

§144.522. Priority Populations.

(a) [~~The program shall implement procedures to identify members of priority populations and admit them before all others.~~] The commission has established six priority populations. Preference shall be given in the following priority order:

(1) pregnant injecting drug users;

(2) pregnant substance abusers;

(3) injecting drug users;

(4) former Supplemental Security Income recipients previously disabled from substance abuse;

(5) parents with children in foster care; and

(6) veterans with honorable discharges [~~all other substance abusers~~].

(b) The program shall implement a marketing/outreach plan that specifically targets these priority populations.

(c) The program shall establish screening procedures to identify members of priority populations and admit them before all others, in priority order.

§144.523. Capacity Management.

(a) The program shall maintain a waiting list or other organized and documented system to track [~~for~~] eligible individuals who have been screened but cannot be treated immediately.

(b)-(c) (No change.)

(d) The program shall consult the state's facility capacity management system to facilitate prompt placement in an appropriate treatment program within a reasonable geographic area.

(e) The program shall implement a mechanism to maintain contact with pregnant women and intravenous drug users waiting for admission.

(f) If a pregnant women is placed on the waiting list, the program must make interim services available to her within 48 hours as described in §144.525 of this title (relating to Interim Services for Priority Populations).

(g) The program shall ensure that each individual who requests and is in need of treatment for intravenous drug abuse is admitted to an appropriate program not later than:

(1) 14 days after making the request; or

(2) 120 days after making the request when interim services are provided to the individual within 48 hours as described in §144.525 of this title (relating to Interim Services for Priority Populations).

(h) [~~(d)~~] Capacity management may be handled through a centralized intake system.

§144.524. Facility Capacity System.

(a) Treatment programs shall report available capacity and waiting list information through the commission's facility capacity

management system and comply with procedures specified by the commission [described in the applicable manual].

(b)-(c) (No change.)

§144.525. Interim Services for Priority Populations.

(a) When a program does not have capacity to admit an injecting drug user or pregnant female, the program shall [make every effort to] place the individual in another treatment facility or provide reasonable access to interim services.

(b) Interim services shall be offered within 48 hours.[:]

[(1) be offered within 48 hours;]

[(2) continue until the individual is admitted into treatment; and]

[(3) include strategies to reduce the adverse health effect of intravenous drug use and to reduce the risk of transmission of disease.]

(c) Interim services shall include counseling and education about HIV and tuberculosis (TB), including the risks of needle-sharing, the risks of transmission to sexual partners and infants, and steps that can be taken to prevent transmission. Referrals for HIV or tuberculosis treatment shall be provided if necessary. For pregnant females, interim services shall also include counseling [provide information and education] about the effects of alcohol and drug use on the fetus and referrals for prenatal care.

(d) The program shall maintain documentation of interim services provided.

[(e) Even when interim services are provided, an individual requesting treatment for intravenous drug use shall be admitted to an appropriate program within 120 days.]

§144.526. Length of Stay Guidelines.

(a) Length of stay in treatment shall be determined by the needs of the individual client. Whenever possible, multiple levels of care shall be used to provide a continuum of care for each individual client.

(b) The commission has adopted Texas Department of Insurance guidelines to provide a tool for monitoring service utilization. Clients may remain in a specific level of treatment for a longer or shorter period of time based on individual need.

(c) When a client's length of stay in a level of treatment exceeds the guidelines, the provider shall clearly document the needs and conditions justifying the variance in the client record.

(d) All facilities shall implement procedures to monitor length of stay according to these guidelines.

(e) The commission has interpreted the Texas Department of Insurance Guidelines to apply them to the commission's defined levels of service. Any revisions adopted by the Texas Department of Insurance supercede the recommended lengths of stay listed in this section.

(1) Residential Level I (Detoxification): 1-14 days for adults and adolescents.

(2) Outpatient Level I (Detoxification): 3-9 days for adults, not applicable for adolescents.

(3) Residential Level II (Intensive Residential): 14-35 days for adults and 14-60 days for adolescents.

(4) Outpatient Level II (Day Treatment): 14-35 days for adults and 14-60 days for adolescents.

(5) Residential Level III (Residential): 28-70 days for adults and 28-120 days for adolescents.

(6) Outpatient Level III (Intensive Outpatient): 30-84 days for adults and 30-84 days for adolescents.

(7) Outpatient Level IV (Outpatient): Up to 180 days for adults and adolescents.

§144.531. Admission [Screening and Assessment].

(a) The program shall assess each applicant face-to-face to determine if the person is appropriate for admission. [Clients receiving treatment services shall have a presenting problem which meets the appropriate DSM-IV criteria as specified in Chapter 148 of this title (relating to Facility Licensure).]

(1) Every client admitted to a Level I treatment program shall meet the DSM-IV criteria for substance intoxication or withdrawal. Persons in need of crisis stabilization who meet the criteria for substance dependence may be admitted to Level I treatment for up to 72 hours.

(2) Every client admission to a Level II, III, or IV treatment program shall meet the DSM-IV criteria for substance abuse or dependence.

(b) All admissions must be authorized or denied by a QCC. [The screening shall include a criteria-based evaluation to determine the appropriate level of service.]

(1) For every applicant admitted to treatment, the client record must include documentation signed by a QCC that the individual met all applicable admission criteria, including the DSM-IV diagnostic criteria.

(2) When an applicant is denied admission, the program shall maintain documentation signed by a QCC which explains why the admission was denied.

(c) The assessment shall include a criteria-based evaluation to determine the appropriate level of service [The psychosocial history and assessment for an adolescent shall take developmental issues into account and shall address child welfare involvement, peer relationships, and gang involvement].

(d) As part of the assessment, the [The] program shall [provide education and shall] assess each applicant's [client's] risk for HIV infection, tuberculosis, and other sexually transmitted diseases. Risk assessments shall follow guidelines as set by the National Institute on Drug Abuse's "Preventing HIV Among Substance Abusers: Risk Assessment/Risk Reduction."

[(1) Education shall adhere to TCADA Workplace Guidelines for HIV and AIDS.]

[(2) Risk assessments and risk reduction counseling shall follow guidelines as set by the National Institute on Drug Abuse's "Preventing HIV Among Substance Abusers: Risk Assessment/Risk Reduction."]

(e) The program's admission criteria shall not exclude members of the commission's priority populations defined in §144.522 of this title (relating to Priority Populations).

(f) The program's admission criteria shall not automatically exclude individuals based on:

(1) physical or mental health history;

(2) current physical or mental health diagnoses or services;

(3) past or present prescription medications;

(4) assumptions of ability to benefit from treatment without documented current behavioral evidence; or

(5) drugs being abused.

(g) The program shall not automatically deny admission to a previous client based on prior treatment unless the individual has been admitted to the facility three or more times in the past 12 months.

(h) The program shall not automatically deny admission based on a perceived threat of harm to self or others. The program shall have a policy and procedures for assessment of potential harm to self or others. If the program determines that an individual is a current risk to self or others, the program may require an evaluation from a qualified mental health provider prior to admission.

(i) All treatment programs shall develop and implement written procedures to identify clients exhibiting conditions or behavior that may suggest unmet mental health needs. The program shall collaborate with and provide referrals to available resources (including qualified and credentialed mental health professionals) to address the client's mental health needs.

§144.541. Specialized Treatment Services for Females.

(a) Specialized female programs shall serve pregnant adult or adolescent females and adult or adolescent females with dependent children. Females with dependent children include females in treatment who are attempting to regain custody of their children.

(b) These programs shall treat the female and her dependent children [~~family~~] as a unit and therefore admit both females and their children into treatment, when appropriate and possible.

(c) All programs offering specialized female services shall provide a comprehensive treatment program. The following services shall be provided directly or through collaborative agreements and case management arrangements with other service providers:

(1) primary medical care for females receiving treatment, including age-appropriate and specific reproductive health care and prenatal care;

(2) gender-specific substance abuse treatment and other therapeutic interventions for females that [~~may~~] address issues of relationships, sexual and physical abuse and parenting;

(3) childcare while the females are receiving services;

(4) primary pediatric care for the clients' children, including immunizations;

(5) therapeutic interventions for the children[~~, which may address their developmental needs, their potential for substance abuse, and their issues of sexual and physical abuse and neglect~~]; and

(6) documented sufficient case management and transportation services to ensure that female clients and their children have access to the services provided by paragraphs (1)-(5) of this subsection.

(d) Programs shall implement a coordinated marketing/outreach plan that targets services and organizations that regularly serve adult or adolescent females with or without dependent children, including Child Protective Services and the Temporary Aid for Needy Families (TANF) program [~~inform relevant entities in their communities that the specialized female program is available~~].

(e) Treatment programs serving women with dependent children shall report monthly measures [~~and annual goals~~] for the women's children when the children receive prevention and/or intervention services.

(f) Programs serving adult or adolescent females shall provide an array of services including Levels II, III, and IV treatment and structured aftercare, either directly or through case management and service agreements. Level, intensity, and duration of services shall be clinically appropriate.

(g) Programs shall have written referral and service coordination procedures with qualified providers to provide:

(1) assessments for children for Early Childhood Intervention services; and

(2) counseling or therapy to address the children's identified developmental, emotional, or psychosocial needs.

§144.543. Pharmacotherapy Services.

(a) (No change.)

(b) Programs shall establish a phase/level system which is consistent with guidelines from the Substance Abuse and Mental Health Services Administration (SAMHSA) [~~Food and Drug Administration~~] and includes the following phases:

(1) Phase I: During the first 45 days of treatment, the client shall receive [~~at least~~] four individual counseling sessions. If not, justification shall be documented in the client record.

(2) Phase II: After 45 days of continuous treatment, the client shall receive [~~at least~~] two individualized counseling sessions monthly. Justification shall be documented in the client record each month this standard is not met.

[~~(3) Phase III: After two years of continuous treatment, the client shall receive at least one individual counseling session per month.~~]

(c) (No change.)

(d) All Pharmacotherapy programs shall adopt policies and procedures that conform with §144.523 of this title (relating to Capacity Management), §144.524 of this title (relating to Facility Capacity System), and §144.535 of this title (relating to Interim Services).

(e) A Pharmacotherapy program can bill for a client receiving methadone who has an excused or planned absence for up to two consecutive days. The frequency of approved absences shall be reasonable and appropriate and shall not exceed eight days in a 30-day period.

(f) All Pharmacotherapy programs shall complete a client fee assessment on each commission-funded client every six months. If a client remains in a commission-funded slot for more than 18 months, the provider must review the treatment plan and justify the need for continued commission-funded treatment in the client's record.

(g) All direct care employees shall demonstrate knowledge or receive training that includes:

(1) symptoms of opiate withdrawal;

(2) drug urine screens;

(3) current standards of pharmacotherapy; and

(4) poly-drug addiction.

§144.545. Family Services.

(a) Providing services to the family of the primary client is required of all commission funded programs. Family centered services

are a crucial ingredient in providing comprehensive, community-based services to children, adolescents and adults. [~~Family services supplement an existing treatment program by providing services to the family of the primary client. Commission funds shall not be used to provide services available through other sources.~~]

(b) Family services shall be designed to identify family risk factors [~~problems~~] associated with the client's chemical dependency, improve the health and functioning of the family unit and/or to assist individual family members to support the client in achieving and maintaining a achieve healthy, drug-free life style [~~styles~~].

(c) Family services are [~~may be~~] provided to the entire family, including older adults, individual family members, and/or a subset of family members. Reimbursable family [~~Family~~] services include:

(1) family psychosocial assessment [~~evaluations~~];

(2) individual counseling or therapy;

(3) group counseling or therapy; [~~and~~]

(4) family counseling or therapy;

(5) family case management;

(6) family in-home support; and

(7) [~~(4)~~] structured, curriculum-based education and/or skills training accompanied by group process.

(d) Family services must be provided by qualified staff including LCDCs who have the documented education, training and experience needed to perform the specific family services being provided [~~function~~]. Qualifications shall be based on industry standards and applicable licensure requirements. LCDCs may provide family education, assessment, and counseling services for issues that are directly related to substance abuse treatment and prevention within the family (including the development of healthy family behavior patterns), commensurate with the individual's training and experience. However, clients and/or family members in need of therapy [~~counseling~~] on issues outside the LCDC's scope of professional practice must be referred to a qualified mental health professional such as an LMSW (Licensed Master Social Worker), LMFT (Licensed Marriage and Family Therapist), LPC (Licensed Professional Counselor) or LPA (Licensed Psychological Associate) [~~LPC, LMFT, or LMSW~~].

(e) Family services must be documented in [~~a separate section of~~] the client record. The record [~~file~~] must include the elements listed.

(1) Family psychosocial assessment [~~evaluation~~]. The assessment [~~evaluation~~] must be conducted by a licensed and qualified [~~properly credentialed~~] professional based upon education and training.

(2) Family service plan. The counselor, client and family shall develop the plan and update it as goals are accomplished or needs change. This plan [~~which~~] must include:

(A) abilities, strengths, preferences, problems and needs identified from the client and family assessment [~~during the evaluation~~];

(B) goals that are realistic, outcome-oriented, measurable, time limited and stated in behavior terms that are understandable to the client and family [~~that address identified needs and state in behavioral terms what the family is expected to achieve during the treatment period~~];

(C) specific services to be provided that enable [~~to help~~] the family to achieve the agreed upon [~~identified~~] goals; and[~~.~~]

(D) aftercare services to be provided upon discharge, including necessary community supports.

(3) Progress notes. Progress notes must document the services provided and the family's response [~~and describe the family's progress towards stated goals~~]. The provider [~~family therapist~~] shall document each service contact in a signed progress note that includes:

(A) date, nature, and duration of the contact;

(B) individuals involved;

(C) content and goals addressed;

(D) progress or lack of progress toward the goals; and

(E) other relevant information.

(4) Discharge plan. Discharge planning shall begin at the time of the initial treatment plan. And [~~The discharge plan~~] shall address ongoing family needs and support activities. The family shall receive a copy of the discharge plan, including:

(A) family goals or activities to sustain progress;

(B) referrals for other needed support services; [~~and~~]

(C) aftercare services ; and [~~, if applicable.~~]

(D) follow-up.

§144.551. Performance Measure Review.

(a) (No change.)

(b) The commission shall review actual performance [~~with targets at least twice each fiscal year~~] and notify the program in writing if the program failed to achieve the expected level of performance.

(c)-(d) (No change.)

[~~(e) If the program fails to satisfactorily resolve any performance measure deficiencies as noted in the commission's review, the commission will implement further corrective action and may impose one or more of the following sanctions:~~]

[~~(1) designation as a high-risk provider;~~]

[~~(2) suspension of payments;~~]

[~~(3) one-time decrease in the contract amount for the fiscal year;~~]

[~~(4) permanent decrease in the contract amount; or~~]

[~~(5) termination of the contract.~~]

§144.552. Select Performance Measure Definitions.

(a) Completion of Treatment. This measure applies to Levels II, III, and IV, except for pharmacotherapy programs. For a client to have completed a level of treatment, the client record must indicate that all of the following criteria have been met.

(1) A client must substantially complete his or her [~~the~~] planned duration of stay [~~the program~~] and individualized treatment plan objectives. This means that the average of subparagraphs (A) and (B) of this paragraph must equal or exceed 75%.

(A) The percentage of the individual's, planned duration of stay (as documented in the most recent treatment plan) that was completed by the client. [~~In programs with a variable length of stay, the planned duration of stay documented in the most recent treatment plan is used as a basis for calculation.~~]

(B) The percentage of the behavioral objectives identified in the original treatment plan and subsequent revisions that have been achieved by the client.

(2) A discharge plan or transfer note must have been completed in accordance with the requirements noted in §148.322 of this title (relating to Discharge Plan) or §148.304 of this title (relating to Treatment Plan Reviews).

(3) The discharge summary or transfer note shall indicate whether the client has successfully completed treatment according to the above criteria, and must be signed by a qualified credentialed counselor. The client record must also contain supporting documentation for completion.

(b) Abstinence. This measure applies to Levels II, III, and IV programs, except for pharmacotherapy programs. Abstinence is the percent of clients who report no use of alcohol or drugs within the past 30 days when contacted 60 days after discharge from the treatment program. For those clients who are transferred to another commission-funded level of service within the same program (therefore no follow-up is required), abstinence is the percent of transferred clients who report no use of alcohol or drugs during the 30 days prior to discharge or the duration of treatment, whichever is less.

[(1) For youth, abstinence is the percent of youth who report no use of alcohol or drugs within the past 30 days when contacted 60 days after discharge from the treatment program. For those youth who are transferred to another commission-funded level of service within the same program (therefore no follow-up is required), abstinence is the percent of transferred youth who report no use of alcohol or drugs during the 30 days prior to discharge or the duration of treatment, whichever is less.]

[(2) For adults, abstinence is the percent of adults who report no use of alcohol or drugs within the past 30 days when contacted 60 days after discharge from the treatment program. For those adults who are transferred to another commission-funded level of service within the same program (therefore no follow-up is required), abstinence is the percent of transferred adults who report no use of alcohol or drugs during the 30 days prior to discharge or the duration of treatment, whichever is less.]

(c) (No change.)

(d) One-Year Retention Rate. This measure applies to Level IV Pharmacotherapy programs. The One-Year Retention Rate is the percentage of clients admitted within the previous fiscal year who have remained continuously active in the program for at least one year as documented by CDS forms.

(e) Abstinence Rate. This measure applies to Level IV Pharmacotherapy programs. The Abstinence Rate is based on the percentage of clients with no positive urinalysis for illicit opiates, amphetamines, cocaine, and barbiturates in the 90 days prior to the Methadone Annual Survey. The client record shall contain copies of all urinalysis test results. This calculation excludes recent admissions.

(f) Employment Rate. This measure applies to Level IV Pharmacotherapy programs. The Employment Rate is based on the percentage of all active clients employed at the time of the Methadone Annual Survey, as documented in the client record. This calculation excludes recent admissions.

§144.553. Client Billings.

(a) Treatment programs shall submit monthly client billings for each client served in the program who is supported [fully or partially] with commission funds.

(b)-(d) (No change.)

[(e) Billings with incomplete or invalid information may generate an error report. When a billing error report is received, the program shall promptly correct the errors or resubmit new client billings as needed. Errors must be corrected before the next billing cycle.]

(e) [(f)] Forms submitted to the commission must contain complete and valid information.

(f) [(g)] The commission will not accept or process payment requests until corresponding Client Data System [Client Oriented Data Acquisition Process (CODAP)] Admission forms have been submitted [and all errors identified through the electronic interface system's edit checks have been corrected].

(g) [(h)] The provider shall maintain complete documentation for all services paid for by commission funds. In addition to the items required by licensure rules, the client record shall include the following information:

(1) weekly summary progress notes which provide a summary of all scheduled groups attended by the client, including the dates covered, the topics, the number of hours, and the client's level of participation;

(2) documentation of the purpose, duration, and justification of any approved absence from a residential program;

(3) a record of all case management, referral, linkage, and follow-up activities; and

(4) a progress note documenting the information gathered in the 60-day follow-up contact, including:

(A) the date and time of successful follow-up contact;

(B) the name of the person contacted and relationship to the client;

(C) the telephone number of the person contacted;

(D) documentation of any unsuccessful attempts at follow-up; and

(E) the signature of the person who conducted and documented the follow-up interview.

§144.554. Client Data Systems (CDS) Forms [CODAP Reports].

(a) All treatment programs shall submit CDS forms [Client Oriented Data Acquisition Process (CODAP) reports] to the commission through the commission's web-based computer system for [on] all clients receiving commission-funded substance abuse treatment services. CDS forms include Adult and Youth Admission Reports (AARs/YARs), Adult and Youth Discharge Reports (ADRs/YDRs), Adult and Youth Follow-up Reports (AFRs/YFRs), Detox Brief Follow-up Report (DBFR), and a CDS Facility Summary (CFS).

(b) Programs shall comply with reporting procedures detailed in the CDS [CODAP] Reference and Instruction Manual. Any changes to instructions that are mailed to treatment programs from the commission prior to revising the CDS Reference and Instruction Manual [CODAP manual] will supersede the instructions in the current CDS Reference and Instruction Manual [CODAP manual].

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903503

Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 349-6733

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40 TAC §144.532

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §144.532 concerning Treatment. This section contains information regarding core program requirements.

These amendments are proposed to update the name of the section; to delineate the exact responsibilities of all commission-funded programs; to make grammatical changes to enhance readability and understanding; to require all programs to provide family education and counseling and group aftercare; to reduce the maximum number of clients allowed in a group counseling session from 16 to 12; to mandate formal letters of agreement that must be renewed annually; to require that programs operating at low capacity implement structured outreach plans; to mandate that where gaps in service delivery exist, programs must document active participation in collaborations to support community resource development; to increase the number of hours of additional structured activities during evenings and weekends; and to specify that all counseling sessions and other activities counted toward the required hours of service must be of at least 30 minutes duration.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be better and more consistent provision of core services in all commission funded treatment programs and improved quality of care. There is no additional effect on small businesses. There is an anticipated economic cost to persons required to comply with the proposed amendments. There is no impact for implementing the requirements for family services since the commission will reimburse these costs. The cost to implement aftercare will depend upon current program design and staffing pattern. It is estimated that the cost for aftercare could be up to $600 per year.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 461.

§144.532. Core Program Requirements [~~General Treatment Services~~].

(a) All treatment programs shall comply with applicable chemical dependency treatment facility licensure requirements for the specified level of service established in Chapter 148 of this title (relating to Facility Licensure).

(b) All programs funded by the commission shall [~~The program shall, to the extent possible and appropriate~~]:

(1) implement a systematic process to identify and provide appropriate referrals for family members of clients;

(2) inform clients and involved family members of family services offered directly and through other community resources; and

(3) document family participation and attempts to engage family members in services.

(c) Levels II, III, and IV treatment programs funded by the commission shall provide:

(1) [~~education about dysfunctional relationships within the~~] family education and counseling related to the client's substance abuse;

(2) life [~~coping~~] skills training;

(3) case management;

(4) relapse prevention services; [~~and~~]

(5) support group opportunities for adolescents and adults, including older adults; and

(6) aftercare, including group counseling.

(d) The program shall have written description of all educational and didactic sessions, including curricula, outlines, and activities.

(e) Group size shall be limited to a number that allows effective interaction between the group and facilitator and between group members.

(1) Group counseling sessions are limited to a maximum of 12 [~~16~~] clients.

(2) Group education sessions, didactic sessions, [~~multifamily groups,~~] and other groups are limited to a maximum of 32 clients. This limitation does not apply to seminars, outside speakers, or other events designed for a large audience.

(f) The program shall establish formal letters of agreement [~~links~~] with available substance abuse and other mental health, health care, and social services to meet the needs of clients and family members. Agreements to coordinate services must be established in writing and renewed annually, and shall include:

(1) names of the organizations entering into the agreement;

(2) services or activities each organization will provide;

(3) signatures of authorized representatives; and

(4) dates of action and expiration.

(g) The program shall develop and implement a written plan of operation explaining outreach efforts, including specific strategies to reach members of the priority populations listed in §144.522 of this title (relating to Priority Populations). The commission may waive this requirement if the program demonstrates high capacity utilization and adequate engagement of priority populations.

(h) Where gaps in the service delivery system exist, the program shall document active participation in collaborations to support community resource development.

(i) Levels II, III, and IV residential programs shall schedule planned, structured activities during evenings and weekends. These hours are in addition to those required by licensure rules. The minimum number of additional hours for Levels II, III, and IV are 10 hours for adults and 15 hours for adolescents. The program shall maintain documentation that the activities were provided, including sign-in sheets. Client participation does not need to be individually recorded in client records.

(j) All counseling sessions and other activities counted toward the required hours of service must last at least 30 minutes.

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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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6733

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40 TAC §§144.533, 144.542, 144.544

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

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§144.533, 144.542 and 144.544 concerning Treatment. These sections contain information on service enhancements, court commitment services and dual diagnosis programs. The repeals are proposed due to reorganization of the rules and deletion of outdated requirements. Requirements related to service enhancements have been incorporated into appropriate sections in this chapter which are being concurrently proposed. Requirements related to court commitment services have been consolidated into §148.238 of this title (related to Court Commitment Services) so that they will all be contained in one section, which is also concurrently proposed. Requirements related to dual diagnosis programs have been deleted.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of the proposed repeals.

Ms. Bleier has also determined that for each year of the first five years the repeals are in effect the anticipated public benefit will be that the continuing requirements from these rules will be presented in a manner that makes them easier to find and understand. This will result in better services from treatment programs. There will be no effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

The repeals are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed repeals is the Texas Health and Safety Code, Chapter 461.

§144.533. Service Enhancements.

§144.542. Court Commitment Services.

§144.544. Dual Diagnosis 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.

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Subchapter G. Network Management Organizations (NMOs)

40 TAC §§144.611-144.616

The Texas Commission on Alcohol and Drug Abuse proposes new §§144.611-144.616 concerning Network Management Organizations (NMOs). These sections contain information regarding service structure; outreach; screening, assessment and referral; care coordination; monitoring service utilization; and service delivery planing and implementation.

These new sections are proposed to establish standards for network management organizations. These rules will apply to networks established under the fiscal year 2000 request for proposals.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be clarity about the roles and responsibilities of network management organizations. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed new rules.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These new sections are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

§144.611. Service Structure.

(a) The network management organization (NMO) shall maintain a chart of the network's organization that identifies all organizations in the network and indicates their function(s) and relationship to the NMO.

(b) The NMO shall maintain a network that includes the following services:

(1) outreach, screening, assessment, and referral (OSAR);

(2) adult treatment (Levels I, II, III and IV);

(3) youth treatment (Levels II, III, and IV); and

(4) specialized female services (Levels II, III, and IV).

(c) The following services must also be included in the network if they were funded in the service area during the state's fiscal year 1999:

(1) pharmacotherapy;

(2) pregnant/postpartum intervention; and

(3) HIV outreach.

(d) The network shall be organized to provide each client with a continuum of services based on individual need.

(e) The network shall also provide minors and tobacco activities to reduce minors' access to tobacco products throughout the service area.

(f) OSAR and minors and tobacco activities may be provided directly by the NMO or through a separate organization that does not provide treatment services in the network.

§144.612. Outreach.

(a) The NMO shall coordinate outreach efforts throughout the provider network.

(b) The NMO shall develop and implement an annual outreach plan to:

(1) increase target populations' knowledge of available services;

(2) improve access to services; and

(3) promote appropriate service utilization.

(c) The outreach plan shall:

(1) describe continuing and new outreach efforts;

(2) include specific strategies to reach and engage the commission's priority populations as described in §144.522 of this title (relating to Priority Populations).

(3) be responsive to system evaluation findings; and

(4) demonstrate coordination of outreach efforts to avoid gaps or duplication of effort.

(d) The NMO shall submit copies of the outreach plan to the following individuals no later than 60 days after signing the commission's contract:

(1) members of the NMO's governing body;

(2) members of the service area's Regional Advisory Consortium(s);

(3) the CEO of each provider in the service network; and

(4) the commission's regional administrator assigned to the service area.

(e) The NMO shall ensure that outreach efforts encompass the entire service area and reach culturally diverse populations.

§144.613. Screening, Assessment, and Referral.

(a) The NMO shall ensure that all persons in the network service area have 24-hour access seven days a week to a toll-free telephone information line for substance abuse prevention, intervention, and treatment services.

(b) The NMO shall provide screening and referral services to ensure access to the appropriate level and type of services needed by applicants and their families.

(1) Screening. The screening process shall be designed to identify warning signs for alcohol, tobacco, and/or other drug abuse The screening shall also identify STD/HIV risk factors as appropriate. If a potential substance abuse problem is identified, the NMO shall arrange for a substance abuse assessment.

(2) Referral. The NMO shall also identify needs that cannot be met by the network and help the applicant and family members access appropriate support systems and community resources. The program shall maintain a list of referral resources.

(3) Follow-up. The NMO shall conduct and document follow-up on referrals whenever possible.

(4) Documentation. The NMO shall maintain documentation which includes:

(A) date of the screening;

(B) name of the individual screened;

(C) demographics of the individual screened

(D) referrals made; and

(E) any follow-up contacts.

(c) Assessments for treatment may be provided directly or through referral to a network treatment provider.

(1) Assessment tools shall be appropriate for the target population.

(2) Assessment shall be provided through a confidential, face-to-face interview.

(3) The assessment shall include a criteria-based evaluation to determine the appropriate level of treatment.

(4) All assessments shall be conducted by qualified credentialed counselors or counselor interns working under appropriate supervision.

(5) Documentation shall include a written summary of the applicant's needs, treatment recommendations, and referrals.

(d) The NMO may also conduct financial assessments for treatment applicants as described in §144.521 of this title (relating to Client Eligibility).

(e) The NMO shall have written procedures that describe screening, assessment, and referral activities.

(f) The procedures shall minimize duplication between the NMO and treatment providers, especially in the area of assessments. Any activity completed by the NMO does not need to be repeated or duplicated by the treatment program.

§144.614. Care Coordination.

The NMO shall establish a care coordination system to maximize the efficiency and effectiveness of the service delivery system. The care coordination system shall include but is not limited to the components described in §144.522 of this title (relating to Priority Populations), §144.523 of this title (relating to Capacity Management), and §144.525 of this title (relating to Interim Services). Through written policies and procedures, the NMO shall:

(1) maintain a centralized waiting list for all network services;

(2) make use of any slot that can benefit a client until a more appropriate service is available before placing any prospective client on the waiting list;

(3) coordinate admission, transfer, transportation, and discharge of clients throughout the network;

(4) provide appropriate screening, referral, and care coordination for clients with co-occurring psychiatric and substance abuse disorders; and

(5) use providers outside the service network when needs cannot be met by network providers.

§144.615. Monitoring Service Utilization.

(a) The NMO shall verify the provider has justification for any client whose length of stay at a level of service exceeds the guidelines listed in §144.526 of this title (relating to Length of Stay Guidelines). Documentation for the justification may be a progress note in the client's record or an updated treatment plan indicating problems needing resolution.

(b) The NMO shall develop procedures to maximize use of available capacity.

(1) Admission and length of stay data shall be reviewed for the network as a whole, for individual providers, and for specific programs and services.

(2) The NMO shall develop and implement a written plan to address any problems identified.

(3) The NMO shall evaluate the results of actions taken and amend the plan as needed.

(c) The NMO shall not offer incentives related to determinations regarding length of stay.

§144.616. Service Delivery Planning and Implementation.

(a) The NMO shall develop a process to track and respond to changing needs of the community. There shall be written policies and procedures describing:

(1) What sources of information will be used to determine areas of greatest need, including input from the Regional Advisory Consortia (RAC) and from providers;

(2) How information about community needs and resources will be obtained from the RAC, providers, and other community stakeholders;

(3) How needs will be prioritized; and

(4) How funds are distributed to areas of greatest need, including criteria for determining from where funds would be freed.

(b) The NMO shall establish a written agreement with the regional RAC that includes:

(1) How information about the network (including service demand and utilization) will be shared with the RAC;

(2) How information about community needs and resources will be obtained from the RAC.

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

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Chapter 148. Facility Licensure

Subchapter A. Licensure Information

40 TAC §§148.3, 148.4, 148.21, 148.23-148.27, 148.41, 148.61

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§148.3, 148.4, 148.21, 148.23-148.27, 148.41 and 148.61 concerning Licensure Information. These sections describe sites and services, variances, new license application process, changes in status, change in ownership, licensure fees, inactive status and closure, licensure review, sanctions, and definitions of terms used in this chapter.

These amendments are proposed to clarify which chemical dependency treatment programs are required to have a license issued by the commission; to explain what sites may offer what services; to clarify that a provider must be approved as a clinical training institution before designating interns to perform duties; to clarify the variance process; to describe what

happens if an applicant fails to provide evidence of compliance within six months; to specify which department within the commission must receive advance notice of proposed changes relevant to a facility's license, invalid licenses, and notices of closure; to clarify that advance written approval is required before a facility moves to a new location; to more fully describe the processes related to inactive status; to require that the licensure certificate must be displayed at each approved site; to clarify that practicing at an unlicensed site is subject to the same penalty as practicing without a license; and to number, expand and refine the definitions of terms used and to remove definitions of terms no longer used in this chapter.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be a clearer and more effective licensure process for facilities providing chemical dependency treatment services. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 464.

§148.3. Sites and Services.

(a) (No change.)

(b) Facilities providing chemical dependency treatment for dually diagnosed clients must be licensed by the commission unless exempt under §148.2 of this title (relating to License Required). [~~A facility shall have written approval from the commission before accepting court commitments.~~]

(c) A facility that has received commission approval to provide a specific level of service [~~(or category of court commitment approval)~~] may provide that service at any of its approved [~~licensed~~] sites or through registered extension sites [~~services~~].

(d) The provider shall have written approval from the commission as a clinical training institution before designating [~~and compensating~~] interns to perform counseling, assessments, or treatment interventions.

(e) (No change.)

§148.4. Variances.

(a) The commission's executive director or designee may grant a temporary variance to a facility or group of facilities.

(b)-(c) (No change.)

(d) A variance cannot be granted for a statutory requirement.

§148.21. New Licensure Application.

(a)-(c) (No change.)

(d) If an applicant fails to provide evidence of compliance within six months, the application will be denied [~~deactivated~~]. After a six-month waiting period, the [~~The~~] applicant may reapply by submitting a new application and application fee [~~reactivate the application by informing the commission in writing, but the application will be treated as a new application~~].

§148.23. Changes in Status.

(a) A facility shall give the commission's licensure department [~~commission~~] advance notice of any proposed change in a program's licensure status and submit the appropriate application and fees. Notice of less than 60 days may delay approval.

(b) The facility shall receive written approval from the commission before:

(1) (No change.)

(2) adding a new site or moving to a new location;

(3)-(4) (No change.)

(c) The provider must also notify the commission's licensure department [~~commission~~] in writing within 30 days after a change in the organization's name or the client gender(s) being served.

§148.24. Change in Ownership.

(a) (No change.)

(b) The facility shall notify the commission's licensure department [~~commission~~] at least 60 days before a change in ownership takes effect.

(c) (No change.)

(d) The invalid licensure certificate shall be returned to the commission's licensure department [~~commission~~] within ten days of the change in ownership.

§148.25. Licensure Fees.

(a)-(b) (No change.)

(c) A facility shall pay the full licensure fee for any licensure period during which it provides chemical dependency treatment. Failure to notify the commission's licensure department [~~commission~~] of closure does not excuse a licensee from paying fees.

(d)-(f) (No change.)

§148.26. Inactive Status and Closure.

(a) Inactive Status. The commission will automatically retire the license of any [~~Any~~] facility in which services are suspended for more than 30 days unless the facility sends a written request for inactive status [~~shall notify the commission with a letter~~] justifying why the commission should not retire the license. To be eligible for inactive status, the facility must be in good standing with no pending sanctions or investigations.

(1) If granted, inactive status is limited to six months. The licensee is responsible for all licensure fees and for proper maintenance of client records while on inactive status.

(2) To return to active status, the facility shall submit a written request to reactivate the license.

(3) If the license is not reactivated, it will be automatically retired [~~expires~~] at the end of the six month period.

(b) Closure. The facility shall notify the commission's licensure department [~~commission~~] in writing within 30 days when it closes a chemical dependency treatment program.

(1) A license becomes invalid when a program closes and the licensure certificate shall be returned to the commission's licensure department [~~commission~~] within 30 days.

(2) When a facility closes, the provider is responsible for properly maintaining client records in compliance with confidentiality regulations.

§148.27. Licensure Review.

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

(e) The facility shall display the licensure certificate prominently at each approved [~~licensed~~] site.

§148.41. Sanctions.

(a)-(c) (No change.)

(d) A facility practicing without a license or practicing at an unlicensed site is subject to a civil penalty of not more than $25,000 for each violation of the Act or these rules. Each day a violation continues or occurs is a separate violation.

(e)-(f) (No change.)

§148.61. Definitions.

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

(1) Abuse–Any act or failure to act which is done knowingly, recklessly or intentionally, including incitement to act, which caused or may have caused injury to a client. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Client abuse may be perpetrated by staff or other clients and includes:

(A) any sexual activity between facility personnel and a client;

(B) corporal punishment;

(C) nutritional or sleep deprivation,

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a client;

(F) restraint that does not conform with these rules;

(G) coercive or restrictive actions taken in response to the patient's request for discharge or refusal of medication or treatment that are illegal or not justified by the patient's condition; and

(H) any other act or omission classified as abuse by the Texas Family Code, §261.001.

(2) Act–Texas Health and Safety Code, Chapter 464.

[~~Acute withdrawal– Withdrawal symptoms that threaten the physical safety of the client, including but not limited to: seizures, hypertensive crisis, deliriums tremens, and severe dehydration with metabolic imbalances.~~]

(3) Admission–Formal documented acceptance of a prospective client to a treatment facility, based on specifically defined criteria.

(4) Adolescent–An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

(5) Adult–An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed by marriage or judicial decree.

(6) Advanced practice nurse–A registered nurse currently licensed in Texas who is prepared for advanced practice and approved by the Texas State Board of Nurse Examiners.

(7) Aftercare [~~services~~]–Structured services provided after discharge from a treatment facility which are designed to strengthen and support the client's recovery and prevent relapse. [~~Services provided by a facility to a client who has been discharged and is no longer receiving services from any of that facility's treatment programs.~~] Aftercare may be provided by the facility directly or through a letter of agreement with another provider. If the program provides two or more hours of services per week, it must be licensed as an outpatient program.

(8) Applicant (licensure)–A person who has submitted a complete application to the commission for licensure, relicensure, or change in status, and paid the application fee.

(9) Approval–Written authorization.

(10) Assessment (treatment)–The process used to interpret information from the psychosocial history to identify [~~gain sufficient information to identify, among other things,~~] the participant's strengths, problems, and needs in order to develop an appropriate plan for treatment [~~as they relate to the use/abuse of alcohol and/or other drugs and the risk of contracting or transmitting infectious diseases/sexually transmitted diseases~~].

(11) Case management–A systematic process to ensure clients receive all substance abuse, physical health, mental health, social, and other services needed to resolve identified problems and needs. Case management activities are provided by an accountable staff person and include:

(A) linking a client with needed services;

(B) helping a client develop skills to use basic community resources and services; and

(C) monitoring and coordinating the services received by a client.

(12) Chemical dependency–Substance abuse and substance dependence as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association. [~~The abuse of, psychological or physical dependence on, or addiction to alcohol, a toxic inhalant, or any substance designated as a controlled substance in the Texas Controlled Substances Act.~~]

(13) Chemical dependency counseling–Face-to-face interactions in which a counselor helps an individual, family or group [~~between clients and counselors to help clients~~] identify, understand, and resolve issues and problems related to chemical dependency.

(14) Chemical dependency counselor–A qualified credentialed counselor or counselor intern [~~working under direct supervision~~].

(15) Chemical dependency education–A planned, structured presentation of information training, provided by qualified staff (not clients), which is related to chemical dependency. It includes but is not limited to: physiological and psychological effects, emotional and social deterioration, rehabilitation and relapse, and risk of acquiring Human Immunodeficiency Virus.

(16) Chemical dependency treatment–A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(17) Chief executive officer–The individual authorized by the governing body to act on its behalf in the overall administration of the facility.

(18) Child–An individual under the age of 13.

(19) Child abuse and neglect–Any act or omission that constitutes abuse or neglect of a child by a person responsible for a child's care, custody, or welfare as defined in the Texas Family Code §261.001.

(20) Client–An individual who has been admitted to a chemical dependency treatment facility licensed by the commission and is currently receiving services.

(21) Clinical training institution–An individual or legal entity approved by the commission to provide a counselor training program in which counselor interns obtain supervised work experience. [~~supervise a counselor intern who performs counseling, assessments, or interventions.~~]

(22) Commission–The Texas Commission on Alcohol and Drug Abuse.

[~~Commissioners– Members of the commission's governing body.~~]

(23) Confidentiality laws–Federal law (42 United States Code, §290 dd-2) and state law (Texas Health and Safety Code, Chapter 611) and regulations adopted pursuant to these statutes.

(24) Consenter–The individual legally responsible for giving informed consent for a client. This may be the client, parent, guardian, or conservator. Unless otherwise provided by law, a legally competent adult is his or her own consenter. Consenters include adult clients, clients 16 or 17 years of age, and clients under [~~13~~]16 years of age admitting themselves for chemical dependency counseling under the provisions of the Texas Family Code, §32.004.

(25) Consultant–An individual who is not an employee who provides professional advice or services to the facility for compensation.

(26) Counselor–See chemical dependency counselor.

(27) Counselor intern (CI)–A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or an approved [~~a registered~~] clinical training institution who has been designated as a counselor intern by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified credentialed counselor.

[~~Day treatment– An outpatient program where the client spends more than five consecutive hours at the program site.~~]

[~~Detoxification services– Chemical dependency treatment designed to systematically reduce the amount of alcohol and other toxic chemicals in a client's body, manage withdrawal symptoms, and encourage the client to seek ongoing treatment for chemical dependency.~~]

(28) Direct care staff–Staff responsible for providing treatment, care, supervision, or other client services that involve a significant amount of face-to-face contact.

(29) Direct supervision–Oversight and direction of a counselor intern provided by a qualified credentialed counselor (QCC). If the intern has less than 2,000 hours of supervised work experience, the supervisor must be on site when the intern is providing services. If the intern has at least 2,000 hours of documented supervised work experience, the supervisor may be on site or immediately accessible by telephone. The qualified credentialed counselor shall:

(A) assume responsibility for the actions of the intern within the scope of the intern's clinical training;

(B) be available for assistance;

(C) conduct and document a complete review of the intern's current written work [~~product~~] at least weekly during the first 1000 hours, monthly during the second 1000 hours, and quarterly during the final 2000 hours;

(D) complete and document a session to observe the intern providing services to chemical dependency clients at least weekly during the first 1000 hours, monthly during the second 1000 hours, and as deemed necessary during the final 2000 hours [~~and document the observation~~]; and

(E) meet with the intern (in a group or individual session) at least one hour each week [~~weekly~~] to provide written and verbal feedback and direction.

(30) Discharge–Formal, documented termination from a treatment facility. Discharge occurs when a client successfully completes treatment goals, leaves against professional advice, or is terminated for other reasons. [~~The time when a client leaves a facility and will no longer be receiving chemical dependency treatment from that facility.~~]

(31) DSM-IV–The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Revised, published by the American Psychiatric Association. Any reference to DSM-IV is understood to mean the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

(32) Dually diagnosed–Diagnosed with co-occurring psychiatric and substance abuse disorders.

(33) Education–See chemical dependency education.

(34) Employee–An individual hired directly by the facility to provide services in exchange for money or other compensation, as determined under the usual common law rules. An employee is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done.

(35) Ensure–Take all reasonable and necessary steps to achieve results.

[~~Executive director– The individual authorized by the governing body to act on its behalf in the overall administration of the facility.~~]

(36) Experience–Direct participation in a similar job activity supervised by a qualified individual.

(37) Exploitation–An act or process to use, either directly or indirectly, the labor or resources of a client for monetary or personal benefit, profit or gain of another individual or organization.

(38) Extension services–Services provided by a licensed facility at a registered site that is not owned, leased, or operated by the licensed facility.

(39) Family–The children, parents, brothers, sisters, other relatives, foster parents, guardians, or significant others who perform the roles and functions of family members in the lives of clients/participants.

(40) FTE–Full Time Equivalent staff position requiring 40 hours per week.

(41) Facility–A legal entity with a single governing body, a single administration, and a single staff that provides chemical dependency treatment.

(42) Governing body–The individual or individuals legally established to operate a facility. The governing body has ultimate legal authority and responsibility for the facility's finances, services and operations.

(43) HIV–Human Immunodeficiency Virus infection.

(44) Immediate supervision–Being physically present while a task is being performed.

(45) Individual service day–A day on which a specific client receives services.

(46) Intake–The administrative process for gathering information about a prospective client and giving a prospective client information about the treatment facility and the facility's treatment and services.

(47) Intervention and assessment service–A service that offers assessment, counseling, evaluation, treatment intervention, or referral services or makes treatment recommendations to an individual with respect to chemical dependency.

(48) License–A grant of authority to a facility to provide chemical dependency treatment in the State of Texas, which is issued by the commission under the Act.

(49) Licensed chemical dependency counselor (LCDC)–A counselor licensed by the Texas Commission on Alcohol and Drug Abuse.

(50) Licensed dietitian–An individual who is currently licensed or provisionally licensed by the Texas State Board of Examiners of Dietitians.

(51) Licensed health professional–A physician, physician assistant, advance practice nurse, registered nurse, or licensed vocational nurse as defined in these rules.

(52) Licensed marriage and family therapist (LMFT)–An individual who is currently licensed as a marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists.

(53) Licensed master social worker (LMSW)–An individual who is licensed as a master social worker by the Texas State Board of Social Work Examiners.

(54) Licensed professional counselor (LPC)–An individual licensed as a professional counselor by the Texas State Board of Examiners of Professional Counselors.

(55) Licensed psychological associate–A person licensed as a psychological associate by the Texas State Board of Examiners of Psychologists.

(56) Licensed vocational nurse (LVN)–A nurse licensed by the Texas State Board of Vocational Nurse Examiners.

(57) Life skills training[~~Skills Training~~]–A formalized program of training provided by qualified staff (not clients), based upon a written curriculum [~~program description~~], to help clients [~~assist the client in acquiring personal habits, attitudes, values, and social interaction skills that will enable the client to~~] manage daily responsibilities [~~function~~] effectively and[~~/or~~] become gainfully employed. It may include [~~includes~~] instruction in communication and social interaction, stress management, problem solving, daily living, and decision making.

(58) Mechanical restraint–Use of a physical device to control or restrict a person's physical movement or actions.

(59) Medical emergency–A medical condition with acute symptoms of sufficient severity that a prudent layperson could reasonably expect the absence of immediate medical attention to result in [~~Physical symptoms requiring immediate medical attention to prevent~~]death or serious [~~imminent~~] harm.

~~[Medication– Any drug used to treat a condition or relieve symptoms, including prescription drugs and over-the-counter drugs.]~~

(60) Medication error–Medication not given according to the written orderby the prescribing professional or as recommended on the medication label. Includes duplicate doses, missed doses, and doses of the wrong amount or drug.

(61) Mental health referral service–See Qualified Mental Health Referral Service.

(62) Neglect–Actions resulting from inattention, disregard, carelessness, ignoring or omission of reasonable consideration that caused, or might have caused, physical or emotional injury to a client. Examples of neglect include, but are not limited to:

(A) failure to provide adequate nutrition, clothing, or health care;

(B) failure to provide a safe environment free from abuse;

(C) failure to maintain adequate numbers of appropriately trained staff;

(D) failure to establish or carry out an appropriate individualized treatment plan; and

(E) any other act or omission classified as neglect by the Texas Family Code, §261.001.

(63) Offer–To make available.

(64) On call–Immediately available for telephone consultation.

(65) On duty–Scheduled and present at the site to perform job duties.

(66) Orders (written, verbal, or telephone)–Direct communication between a physician and licensed program staff in which the physician directs specific treatments.

(67) Person–An individual, firm, partnership, corporation, association, or other business or professional entity.

(68) Personal restraint–Physical contact to control or restrict a person's physical movement or actions.

(69) Personnel–Members of the governing body, employees, contract providers, consultants, agents, representatives, volunteers, and other individuals working on behalf of the facility through a formal or informal agreement.

(70) Physician–A physician licensed by the Texas State Board of Medical Examiners, or a physician employed by any agency of the United States who has a license in any other state of the United States.

(71) Physician assistant–An individual registered as a physician assistant by the Texas State Board of Medical Examiners.

(72) Policy–A statement of direction or guiding principle issued by the governing body.

(73) Practicum–A 300 hour course of structured clinical training in the 12 core functions required for chemical dependency counselor licensure.

(74) Private practice–Unless otherwise defined by a licensing board, an individual's professional counseling practice in which the individual:

(A) provides all treatment services personally;

(B) does not report to a supervisor or utilize subordinate counseling staff;

(C) is a licensed chemical dependency counselor or exempt from licensure.

(75) Procedure–A step-by-step set of instructions.

[~~Process counseling– Counseling designed to help clients identify and explore the feelings and emotions they encounter and resolve areas of conflict that led to their problems associated with chemical dependency. It does not include cognitively oriented or psychoeducational groups.~~]

(76) Program–A specific level of chemical dependency treatment delivered to a defined client population.

(77) Program director–The individual who manages a chemical dependency treatment program.

(78) Provide–To perform or deliver.

(79) Psychiatric emergency–Symptoms requiring immediate psychiatric attention.

(80) Psychologist–An individual licensed as a psychologist by the Texas State Board of Examiners of Psychologists.

(81) Qualified credentialed counselor (QCC)–A licensed chemical dependency counselor or one of the professionals listed below:

(A) licensed professional counselor (LPC);

(B) licensed master social worker (LMSW);

(C) licensed marriage and family therapist (LMFT);

(D) licensed psychologist;

(E) licensed physician

(F) certified addictions registered nurse (CARN);

(G) licensed psychological associate; and

(H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psyche-mental health (APN-P/MH).

(82) Qualified mental health referral service–A service that does not provide treatment directly but instead refers clients in need of chemical dependency treatment to qualified providers. A mental health referral service shall meet the statutory requirements of Texas Health and Safety Code, §164.007.

(83) Refer–Identify appropriate services and provide information and assistance needed to access them.

(84) Registered nurse (RN)–A professional nurse licensed by the Texas State Board of Nurse Examiners.

(85) Religious organization–A church, synagogue, mosque, or other religious institution:

(A) the purpose of which is the propagation of religious beliefs; and

(B) that is exempt from federal income tax by being listed as an exempt organization under the Internal Revenue Code (26 United States Code), Section 501(a).

(86) Residential site–A site owned, leased, or operated by the facility where clients who are receiving chemical dependency treatment stay in a structured, supervised, 24-hour living environment [~~sleep overnight~~].

(87) Retaliate–Adverse actions taken to punish or discourage a person who reports a violation or cooperates with an investigation, inspection, or proceeding. Such actions include but are not limited to suspension or termination of employment, demotion, discharge, transfer, discipline, restriction of privileges, harassment, and discrimination.

[~~Screening– Determining whether a client meets the program's admission criteria, based on the person's reason for admission, medical and chemical use history, and other needed information.~~]

(88) Seclusion–The placement of a client alone in a room from which exit is prevented.

(89) Service day–A day during which the program provides scheduled services to any client.

(90) Sexual exploitation–A pattern, practice, or scheme of conduct that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. It may include sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with or part of treatment.

(91) Site–A single identifiable location owned, leased, or controlled by a facility where any element of chemical dependency treatment is offered or provided, including aftercare.

(92) Small family living environment–A single apartment unit, house, or similar residence designed for an average size family, with no more than four bedrooms.

(93) Solicit–To contact a person for the purpose of inducing the person, directly or indirectly, to enter treatment or make a referral.

(94) Special treatment procedures–Personal restraint, mechanical restraint, and seclusion.

(95) Staff–Individuals employed by the facility to provide services for the facility in exchange for money or other compensation.

~~[STDs– Sexually transmitted diseases.]~~

(96) Support services–Services designed to provide individuals with a stable living environment, such as meals, shelter, and access to peer support groups.

(97) Treatment–See chemical dependency treatment.

(98) Treatment intervention–A meeting designed to persuade a chemically dependent individual to enter treatment.

(99) Treatment level–The intensity of treatment provided by a program.

(100) Treatment protocol–Instructions for the delivery of treatment services to groups of clients by non-licensed and licensed staff.

(101) Unethical conduct–Conduct prohibited by the ethical standards adopted by state or national professional organizations or by rules established by a profession's state licensing agency.

(102) Unprofessional conduct–An act or omission that violates commonly accepted standards of behavior for individuals or organizations.

(103) Volunteer–An individual who provides services for the facility without compensation. Unpaid students are volunteers.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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Subchapter B. Facility Management

40 TAC §§148.71-148.74, 148.113, 148.116, 148.117, 148.119

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§148.71-148.74, 148.113, 148.116, 148.117 and 148.119 concerning Facility Management. These sections contain information on: the governing body; chief executive officer; policies, procedures and licensure rules; standards of conduct; initial training; personnel files and training records; basic staffing requirements; and clinical training institutions.

These amendments are proposed to change the term executive director to chief executive officer; to require timely correction of identified deficiencies; to specify the requirements for and duties of a chief executive officer; to clarify the requirements related to policies, procedures and licensure rules; to make it clear that client abuse, neglect and exploitation are considered an unprofessional and unethical act; to add to the standards of conduct the requirement that facility personnel shall not have a personal or business relationship with a client until at least two years after the client's discharge; to require facilities to have written policies that comply with the commission's rules on standards of conduct; to require that initial training must be completed within seven days of hire; to specify under what circumstances video, manual or computer-based training are acceptable; to specify requirements for documentation of initial staff training; to clarify the requirements for personnel files and training records; to clarify basic staffing requirements for various duties; to add to the section on basic staffing requirements the rule that former clients shall not be hired until at least two years after discharge from active treatment; and to clarify that counselor interns may only be used in facilities registered as clinical training institutions.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be better management in facilities providing chemical dependency treatment services. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 464.

§148.71. Governing Body.

(a) The facility's governing body is legally responsible for the management, services, and operations of the program. The governing body shall:

(1) (No change.)

(2) designate a chief [~~an~~] executive officer [~~director~~];

(3)-(8) (No change.)

(9) ensure timely correction of identified organizational, fiscal, and program deficiencies.

(b) (No change.)

§148.72. Chief Executive Officer [~~Director~~].

The chief executive officer [~~director~~] is responsible for the day-to-day operations of the facility and is accountable to the facility's governing body. The chief executive officer [~~director~~] shall:

(1) have documented education and/or experience [~~demonstrate competence~~] in financial , administrative, and personnel management, and other areas needed to manage the facility effectively;

(2) ensure compliance with applicable laws and rules;

(3) ensure that all staff are competent and trained; [~~and~~]

(4) establish mechanisms to ensure quality of treatment services; and

(5) [~~(4)~~] maintain adequate financial records according to generally accepted accounting principles. Financial records shall include:

(A) an annual budget;

(B) records of income and expenditures; and

(C) a written fee policy.

§148.73. Policies, Procedures, and Licensure Rules.

(a) The facility shall operate according to a written program description and policies and procedures that comply with all applicable licensure rules.

(b) (No change.)

(c) The governing body shall establish policies that comply with licensure rules, and the chief executive officer [~~director~~] shall use the policies to develop and implement all needed procedures.

(d) The policy and procedures manual shall be current, in compliance with current licensure standards, individualized to the program, well organized, and easily accessible to all staff at all times.

(e) Within 10 days of a policy or procedure change, the [~~The~~] facility shall inform staff about any changes to the policy and procedure manual that are relevant to their job duties and [~~,~~] document the notification[~~, and provide training as needed~~]. If training is needed, it shall be provided and documented within 60 days.

§148.74. Standards of Conduct.

(a) (No change.)

(b) Neither the facility nor any of its personnel shall:

(1) commit an illegal, unprofessional or unethical act (including client abuse, neglect, or exploitation);

(2)-(6) (No change.)

(c) (No change.)

(d) Facility personnel shall not enter into a personal or business relationship with a person who receives services from the facility until at least two years after the service recipient's discharge.

(e) [~~(d)~~] The facility shall have written policies on staff conduct and reporting procedures that comply with this section.

§148.113. Initial Training.

(a) Each employee shall complete initial training during the first seven calendar days of employment [~~before working without immediate supervision.~~]

(b)-(c) (No change.)

(d) Video, manual, or computer-based training is acceptable if the supervisor discusses the material with the employee in a face-to-face session to highlight key issues and answer questions.

(e) Documentation of the initial training shall be signed by the supervisor and the employee and maintained in the employee's personnel file.

§148.116. Personnel Files and Training Records.

(a) (No change.)

(b) The facility shall maintain current personnel documentation on each employee . Training records and supervision records may be stored separately from the main personnel file, but shall be easily accessible upon request. Required documentation [~~that~~] includes, if [~~as~~] applicable:

(1) job description;

(2) application or resume;

(3) documentation that the facility has direct verification from the credentialing authority (by telephone or letter) that required credentials are current at the time of employment and maintained throughout employment [~~verification of current credentials~~];

(4) documentation of appropriate screening and required background checks;

(5) signed documentation of required training (initial and annual);

(6) documentation of other training the employee has completed [~~written supervisory approval to provide treatment services independently~~];

(7) records of direct supervision for all counselor [~~trainees and~~] interns;

(8) annual performance evaluations; and

(9) records of any disciplinary actions.

(c) Documentation of training for individual staff members [~~for in-service training~~] shall include:

(1) date;

(2) number of hours;

(3) topic [~~content~~];

(4) instructor's name [~~and qualifications~~]; and

(5) signature of the instructor (or equivalent verification) [~~; and~~]

[~~(6) signature of the person completing the training~~].

(d) The facility shall maintain documentation of all in-service training.

(1) For each topic, the file shall include an outline of the contents and the name, credentials, and relevant qualifications of the person providing the training.

(2) For each group training session, the facility shall maintain on file a dated participant sign-in sheet.

(3) When in-service training is delivered to only one or two individuals at a time, the individual's dated certificate of completion may substitute for the participant sign-in sheet.

(e) [~~(d)~~] Personnel files shall be kept for at least two years after the individual stops working at the facility. Documentation of training required in §148.118 of this title (relating to Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct) must be kept for at least five years.

§148.117. Basic Staffing Requirements.

(a)-(b) (No change.)

(c) Chemical dependency education shall be taught by chemical dependency counselors or people who have the specialized education, expertise, and/or experience needed to teach the material,

including knowledge of chemical dependency and its relationship to the topic.

(d) (No change.)

(e) All chemical dependency counselor [~~trainees and~~] interns shall work under the direct supervision of a qualified credential counselor as required in Chapter 150 of this title (relating to Counselor Licensure).

(1) The QCC may not supervise more than five trainees.

(2) The facility shall adjust the supervisor's direct treatment responsibilities to allow adequate time for supervision.

(f) Counselors shall not provide [~~providing~~] group or individual counseling focused on trauma, abuse, or sexual issues unless they are licensed and [~~shall~~] have specialized education/training and supervised experience in the subject. Required training must be [~~which is~~] defined in writing by the program and documented in the individual's personnel file.

(g) New employees who have not completed crisis intervention and/or CPR training shall not be on site alone. One or more direct care staff trained in non-violent crisis intervention shall be on duty and on site at all times that the program is in operation. In residential programs, one or more direct care staff certified in CPR must also be on duty and on site at all times that the program is in operation.

(h) Direct care staff [~~Staff~~] included in staff-to-client ratios shall not have job duties that prevent ongoing and consistent [~~interfere with effective~~] client supervision.

(i) The facility shall not allow its clients to serve as staff. Former clients shall not be hired until at least two years after discharge from active treatment.

(j) The facility shall ensure that personnel do not endanger the health, safety or well-being of clients and do not use mood-altering substances which interfere with their job performance.

§148.119. Clinical Training Institutions.

A facility shall not use [~~compensate~~] a counselor intern for performing counseling, assessments, or treatment interventions unless the facility is registered with the commission as a clinical training institution as required in §150.72 of this title (relating to Clinical Training Institutions).

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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Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6733

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40 TAC §148.112

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §148.112 concerning Facility Management. This section contains information on hiring practices.

These amendments are proposed to direct that the facility must obtain the results of a statewide criminal background check done on all staff who have access to adolescents or children.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be better protection of adolescents and children who are served by chemical dependency programs. There is no additional effect on small businesses. The anticipated economic cost to persons required to comply with the proposed amendments is $15 per staff person for those programs that serve adolescents and children.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 464.

§148.112. Hiring Practices.

(a)-(e) (No change.)

(f) The facility shall obtain the results of a statewide criminal background check from the Department of Public Safety on all staff with access to adolescents or children.

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

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40 TAC §148.114

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §148.114 concerning Facility Management. This section contains information on special training requirements.

This amendment is proposed to allow a facility to accept documented training from another organization during the year prior

to employment if it meets commission requirements; to require a minimum number of hours of face-to-face training in issues related to abuse, neglect, exploitation, illegal, unprofessional and unethical conduct for all staff who have any client contact; to set standards for required, face-to-face training related to tuberculosis, HIV, Hepatitis C and other sexually transmitted diseases for all direct care staff; to require that direct care employees have their current certification in CPR within 90 days of hire and to specify that staff in programs that serve women with their dependent children must have certification in both adult and child/infant CPR; to specify the requirements for nonviolent crisis intervention training, training in special treatment procedures, training for staff who conduct intakes or assess applicants for admission, detoxification training, training of staff who supervise self-administration of medication, and staff training requirements in adolescent programs; and to state the conditions under which video, manual or computer-based training are acceptable

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be better management in facilities providing chemical dependency treatment services. There is no additional effect on small businesses. The anticipated economic cost to persons required to comply with the proposed new rules will depend upon the type of program and the current training practices. The proposed amendments could result in a slight increase or decrease in training costs.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 464.

§148.114. Special Training Requirements.

(a) (No change.)

(b) The facility may accept documented training from another organization completed during the year prior to employment if it meets commission requirements. [~~Staff shall have all required training before performing job duties independently. Training must be completed within 90 days from the date of hire. Unless otherwise specified, training in the following topics is required only once.~~]

(c) The facility shall [~~annually~~] provide face-to-face [~~staff who have any client contact with at least eight hours of approved~~] training in issues relating to abuse, neglect, exploitation, illegal, unprofessional, and unethical conduct to all staff who have any client contact.

(1) This training shall comply with the interagency memorandum of understanding on abuse training (see §148.118 of this title (relating to Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct)).

(2) Crisis intervention training and other training related to improving client care may be included in the required hours.

(3) Full time staff in residential programs must receive at least eight hours every year, and full time staff in outpatient programs must receive at least two hours every year. Hours of training for part time staff may be determined by the facility based on the number of hours worked and the amount of direct client contact.

(d) All direct care staff shall complete two hours of face-to-face [~~HIV~~] training related to tuberculosis, HIV, Hepatitis C, and other sexually transmitted diseases during the first 90 days of employment [~~based on the commission's AIDS/HIV Model Workplace Guidelines~~].

(1) The training must be based on the Texas Commission on Alcohol and Drug Abuse Workplace and Education Guidelines for HIV and Other Communicable Diseases.

(2) Staff shall receive an update with current information every two years.

[~~(e) All employees shall receive information on tuberculosis and STDs that includes:~~]

[~~(1) high-risk populations,~~]

[~~(2) symptoms;~~]

[~~(3) containment;~~]

[~~(4) standard testing and treatment procedures; and~~]

[~~(5) available resources; and~~]

[~~(6) appropriate referral.~~]

(e) [~~(f)~~] All direct care employees in residential programs shall have current certification in CPR within 90 days of hire.

(1) Personnel in licensed medical facilities are exempt if emergency resuscitation equipment and trained response teams are available 24 hours a day.

(2) Licensed medical physicians, registered nurses, licensed vocational nurses, physician assistants, and advanced practice nurses are also exempt.

(3) Staff working in programs that serve women with their dependent children must have certification in adult and child/infant CPR.

(f) [~~(g)~~] All direct care employees shall have at least four hours of face-to-face training [~~and competency~~] in nonviolent crisis intervention during the first 90 days of employment, with two additional hours every subsequent year.

(1) The instructor shall have successfully completed a course for crisis intervention instructors or have equivalent training and experience.

(2) The training shall teach employees how to use verbal and other non-physical methods for prevention, early intervention, and crisis management.

(g) [~~(h)~~] All direct care employees working in programs that use special treatment procedures shall have face-to-face training and competency in the safe methods of the specific procedures used within 90 days of hire. This includes all direct care staff working in adolescent programs, detoxification programs, or programs that accept emergency detentions. The training must last approximately four hours and must include hands-on practice under the supervision of a qualified instructor. It is required one time only.

~~[(i) Supervisors shall observe and document that counselors demonstrate competency in the facility's treatment modalities before working without immediate supervision.]~~

(h) [~~(j)~~] Each employee who conducts intakes or assesses applicants for admission [~~screenings~~] shall complete eight hours of training in the program's intake and admission determination [~~screening~~] procedures annually. [~~An employee shall not conduct screening or intake unless training is complete and current.~~]

(1) The first eight hours must be completed during the first 90 days of employment, and an employee shall not conduct intakes or assess applicants for admission unless training is complete and current.

(2) The training shall cover the DSM-IV diagnostic criteria for substance abuse disorders, and shall also include information to help staff recognize possible unmet mental health needs and provide appropriate referrals for further mental health assessment and follow-up.

(i) [~~(k)~~] All direct care employees working in detoxification programs shall complete detoxification training during the first 90 days of employment. The training is required one time only and [~~which~~] shall:

(1) be provided by a physician, physician assistant, advanced practice nurse, or registered nurse with at least one year of documented experience in detoxification;

(2) include:

(A) signs of withdrawal;

(B) pregnancy-related complications (if the program admits females of child-bearing age);

(C) observation and monitoring procedures;

(D) appropriate intervention; [~~and~~]

(E) complications requiring transfer ; and

(F) frequently-used medications, including purpose and precautions.

(j) [~~(l)~~] All programs that admit females of child-bearing age shall have at least one staff person with documented knowledge of pregnant substance-abusing females and their care. When a pregnant female is admitted, all members of the treatment team shall receive information needed to provide appropriate care.

(k) [~~(m)~~] All employees responsible for supervising clients in self-administration of medication who are not credentialed to administer medication shall complete at least two hours of documented training from a physician, pharmacist, physician assistant, or registered nurse before performing this task. The training is required one time and must be completed during the first 90 days of employment. It shall include:

(1) prescription labels;

(2) medical abbreviations;

(3) routes of administration;

(4) use of drug reference materials;

(5) storage, maintenance, handling, and destruction of medication;

(6) documentation requirements; and

(7) procedures for medication errors, adverse reactions, and side effects.

(l) All supervisory and direct care staff working in adolescent programs shall receive at least eight hours of specialized education or training in adolescent health and development each year. The training shall include:

(1) psychosocial stages of adolescent development;

(2) physical growth and development;

(3) adolescent culture;

(4) communicable diseases;

(5) mental health;

(6) substance abuse and dependency in adolescents; and

(7) family systems.

(m) Unless otherwise specified, video, manual, or computer-based training is acceptable if the supervisor discusses the material with the employee in a face-to-face session to highlight key issues and answer questions.

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

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Subchapter C. Client Management

40 TAC §§148.141, 148.143, 148.161-148.164, 148.171-148.173, 148.181, 148.183, 148.185

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§148.141, 148.143, 148.161-148.163, 148.171-148.173, 148.181, 148.183, 148.185 and proposes new §148.164 concerning Client Management. These sections contain information on: required postings; voluntary clients–additional rights; client abuse, neglect, and exploitation; behavior management; client labor; searches; client record security; general documentation requirements; release of confidential information; significant incident reports; special treatment procedures; and adolescents absent without permission.

These amendments and new section are proposed to clarify that it is the commission's current poster on reporting complaints and violations that must be posted; to specify that required postings must be at each approved site; to clarify the process regarding requests for discharge from voluntary clients under 16 years of age; to replace the term executive director with chief executive officer; to fully describe the process for re-

porting allegations of client abuse, neglect or exploitation; to specify that the client government process cannot substitute for the client grievance procedure; to mandate that written information about required housekeeping activities and responsibilities be given to the client at the time of admission; to specify that two years must elapse between discharge of a former client and (1) the employment of the former client by the facility, (2) any business relationship between the former client and a facility staff member, and/or (3) the giving of personal gifts to the former client by a staff member; to require a policy on searches and to set parameters for the search process in facilities that choose to allow searches; to add requirements regarding client and applicant record security including location of records, protection of applicant information, and a record of destroyed client records; to clarify the requirement for signatures on documentation; to include applicant information and specific legal citations in the section on release of confidential information; to clarify the requirements regarding significant incident reports; to require all adolescent programs, detoxification programs and programs that accept emergency detentions to authorize the use of personal restraint; to reduce the maximum amount of time personal restraint may be used on a client; and to clarify what programs must have written procedures used when an adolescent leaves the program without permission.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be better protection of clients in facilities providing chemical dependency treatment services. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments and new section.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments and new section are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed amendments and new section is the Texas Health and Safety Code, Chapter 464.

§148.141. Required Postings.

(a) The facility shall post a legible copy of the following documents in a prominent public location that is readily available to clients, visitors, and employees:

(1) (No change.)

(2) the commission's current poster on reporting complaints and violations; and

(3) (No change.)

(b) The Bill of Rights and the commission's poster shall be displayed in English and in a second language at each approved [~~licensed~~] site.

§148.143. Voluntary Clients-Additional Rights.

In addition to the rights described in §148.142 of this title (relating to Client Bill of Rights), voluntary clients in residential programs shall be advised as to the following rights with regard to requests for discharge:

(1) You have the right to leave the treatment facility within four hours after you tell a staff person you want to leave. If you want to leave, you need to say so in writing or tell a staff person. If you tell a staff person you want to leave, the staff person must write it down for you to ensure that it is documented. There are only three reasons why you would not be allowed to leave:

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

(C) Third, if you are under 16 years old, and the person who admitted you (your parents, guardian, or conservator) doesn't want you to leave, you may not be able to leave. If you request release, staff must explain to you whether or not you can sign yourself out and why. The facility must notify the person who does have the authority to sign you out and tell that person that you want to leave. That person must talk with the program director [~~to your doctor~~], and the program director [~~your doctor~~] must document the date, time and outcome of the conversation in your client [~~medical~~] record.If the person who admitted you to the facility does not want you to leave the facility and says so in writing, you must remain in treatment.

(2)-(3) (No change.)

§148.161. Client Abuse, Neglect, and Exploitation.

(a) (No change.)

(b) Any person who receives an allegation or has reason to suspect that a client has been, is, or will be abused, neglected, or exploited shall immediately inform the chief executive officer [~~director~~] or designee. If the allegation involves the chief executive officer, it shall be reported directly to the facility's governing body or the commission's investigations department.

(c) If the allegation involves sexual exploitation, the chief executive officer [~~director~~] shall also comply with reporting requirements listed in the Civil Practice and Remedies Code, §81.006.

(d) The chief executive officer [~~director~~] shall take immediate action to prevent or stop the abuse, neglect, or exploitation and provide appropriate care and treatment.

(e) The chief executive officer [~~director~~] or designee shall make a verbal report to the commission's investigations department [~~commission~~] immediately but no later than [~~within~~] 24 hours. This is in addition to the reports specified in the Texas Human Resources Code, §48.082 and the Texas Family Code, §261.001.

(f) The person who reported the incident shall submit a written incident report to the chief executive officer [~~director~~] within 24 hours.

(g) The chief executive officer [~~director~~] shall send a written report to the commission's investigations department [~~commission~~] within two working days after receiving notification of the incident. This report shall include:

(1) the name of the client and the person the allegations are against;

(2) the information required in the incident report or a copy of the incident report;

(3) other individuals, organizations, and law enforcement notified.

(h) The chief executive officer [~~director~~] or designee shall also notify the legal consenter. If the client is the legal consenter, family members and significant others may be notified only if the client gives written consent.

(i) The facility shall investigate the complaint and take appropriate action unless otherwise directed by the commission's investigations department [~~commission~~].

(j) The governing body [~~authority~~] or its designee shall take action needed to prevent any confirmed incident from recurring.

(k) (No change.)

§148.162. Behavior Management.

Facility staff shall use appropriate behavior management to enforce program rules and protect the health, safety, welfare, and rights of all clients.

(1)-(7) (No change.)

(8) The program may have a system of client government if staff monitor the clients' governing group and approve its decisions. The client government process cannot be used in place of the client grievance procedure.

§148.163. Client Labor.

(a) Clients can be required to maintain their own living quarters and client activity areas if they are physically able to do so. These housekeeping activities and individual/group responsibilities shall be clearly defined in writing and presented to the client at the time of admission.

(b) The facility shall not hire clients to fill staff positions. Former clients are not eligible for employment at the facility until at least two years after documented discharge from active treatment.

(c)-(d) (No change.)

(e) Staff members shall not enter into a business relationship with any client or give personal gifts to clients until at least two years after documented discharge.

§148.164. Searches.

(a) The facility shall adopt a policy on searches. If searches are allowed, the facility shall adopt a search procedure that ensures the protection of client rights.

(b) Searches may only be conducted to protect the health, safety, and welfare of clients, including detection of drugs and weapons.

(c) Searches must be conducted in a professional manner that maintains respect and dignity for the client. All searches must comply with the following standards.

(1) Staff members performing a body search must be the same gender as the client.

(2) The client must be allowed to remain fully clothed during a body search. The client may be required to remove jackets, coats, and extra garments. Staff may use their hands to pat down the client's body to feel for illicit items.

(3) The client must be present when a search is conducted of belongings such as back packs, purses, and luggage.

(4) When searching bedrooms, all clothes, furniture, and personal items must be returned to their original state.

(5) All searches must be witnessed by a second staff person or another individual who is not directly involved in the search.

(6) All searches must be documented in the client record, including the circumstances prompting the search, the result of the search, and the signature of the individuals conducting and witnessing the search.

(d) Strip searches are not allowed. If the provider believes a strip search is necessary, the provider must contact local law enforcement and request that the client be transferred to the criminal justice system. The circumstances and justification for the request and transfer must be documented in the client record.

§148.171. Client Record Security.

(a) The facility shall implement a written policy and procedures to protect all client records and other client-identifying information from loss, tampering, and unauthorized access or disclosure.

(1) All active client records must be stored at the facility, and inactive records in off-site storage must be fully protected.

(2) Information that identifies applicants must be protected to the same degree as information that identifies clients.

(b)-(d) (No change.)

(e) The program shall have an effective tracking system, and an assigned staff person shall ensure that each record is returned to the locked file at the end of each day or shift.

(f)-(g) (No change.)

(h) If client records are microfilmed, scanned, or destroyed, the facility shall take steps to protect confidentiality. The facility shall maintain a record of all client records destroyed on or after September 1, 1999, including the client's name, record number, birthdate, and dates of admission and discharge.

§148.172. General Documentation Requirements.

The facility shall keep complete, current documentation.

(1) (No change.)

(2) All documents and entries shall have full original signature, credentials, and date [~~be signed and dated~~]. If the document relates to past activity, the date of the activity shall also be recorded. Signature stamps are not acceptable.

(3)-(4) (No change.)

(5) The facility shall create a record for each client at the time of admission. All documents related to active clients shall be filed and readily available on site.

(6)-(7) (No change.)

§148.173. Release of Confidential Information.

(a) The facility shall implement written procedures for protecting and releasing client and applicant information that conform to federal and state confidentiality laws and regulations, including 42 CFR Part 2 (the federal regulations on the Confidentiality of Alcohol and Drug Abuse Patient Records).

(b)-(e) (No change.)

§148.181. Significant Incident Reports.

(a) Staff shall complete an incident report for all significant client incidents, including:

(1)-(9) (No change.)

(10) fire or significant disruption of program operation (including disruption due to insufficient staffing);

(11) death of an active outpatient or residential client (on or off the program site); and

(12) clients absent without permission from a residential [~~or day treatment~~] program.

(b)-(e) (No change.)

(f) The chief executive officer [~~director~~] shall report these incidents to the commission's investigations department [~~commission in writing~~] within 72 hours of discovery:

(1) fires and natural disasters;

(2) substantial disruption of program operation;

(3) death of an active client (on or off the program site); and

(4) violations of laws, rules, and professional and ethical codes of conduct.

(g) The chief executive officer [~~director~~] shall report all incidents of alleged client abuse, neglect, and exploitation to the commission's investigations department [~~commission~~] as described in §148.161 of this title (relating to Client Abuse, Neglect, and Exploitation).

(h) (No change.)

(i) Once a year, the chief executive officer [~~director~~] or designee shall review all incident reports to:

(1) identify patterns;

(2) evaluate the effectiveness of staff response; and

(3) take any corrective or preventive action needed.

(j) (No change.)

§148.183. Special Treatment Procedures.

Staff shall use special treatment procedures appropriately to protect the health, safety, and rights of clients and other individuals.

(1) The governing body shall adopt a policy to either authorize or prohibit the use of personal restraint, mechanical restraint, and seclusion. All adolescent programs, detoxification programs, and programs accepting emergency detentions shall authorize use of personal restraint.

(2)-(11) (No change.)

(12) The chief executive officer [~~director~~] or designee shall:

(A) review all incident reports involving special treatment procedures;

(B) investigate unusual or possibly unjustified use of the procedures; and

(C) take appropriate action to address any identified problems.

(13) Facilities using personal restraint shall comply with the following.

(A) Staff shall not personally restrain a client for longer than twenty minutes [~~one hour~~]. At the end of twenty minutes [~~one hour~~], staff shall implement the facility's psychiatric emergency procedures.

(B) (No change.)

(14)-(16) (No change.)

§148.185. Adolescents Absent Without Permission.

The facility shall have written procedures that staff use when an adolescent leaves a [~~residential or day treatment~~] program without permission. The procedure shall include:

(1) time frames that determine when a client is absent without permission;

(2) time frames and persons responsible for notifying the legal consenter(s);

(3) actions to be taken by staff; and

(4) incident report documentation.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903511
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 349-6733

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Subchapter D. Program Services

40 TAC §§148.201-148.203, 148.211, 148.231-148.233, 148.236-148.238, 148.252, 148.261-148.268

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§148.201, 148.202, 148.211, 148.231-148.233, 148.236, 148.252, 148.261-148.268 and proposes new §§148.203, 148.237, and 148.238 concerning Program Services. These sections contain information on: general information; services required in all programs; client transportation; Level I treatment (outpatient or residential detoxification); adolescents; parents and their dependent children; structured therapeutic children's services; extension services; small family living environments; court commitment services; meals in residential programs; general provisions for medication; medication storage; medication inventory; disposing of medication; staff qualifications and training; authorizations for medication; administration of medication; and self-administration of medication.

These amendments and new sections are proposed to add and/or update appropriate references; to ensure that residential programs have procedures that provide for clients to continue prescribed medication after admission; to require that chemical dependency education is based on a course curriculum and that all sessions include opportunities for client participation and discussion; to require programs to provide education about specific communicable diseases; to require case management for other services needed by clients; to mandate that facilities have a written policy regarding the use of facility vehicles and/or staff to transport clients and to set parameters for facilities that choose

to use their resources to provide transportation for clients; to clarify and/or add requirements for Level I treatment programs including hourly checks while clients are sleeping, some additional experience and/or training requirements for certain staff, and at least one counseling session to encourage clients to seek appropriate treatment after detoxification; to strengthen the requirements for adolescent treatment programs including family involvement and prohibition of tobacco use by adolescents, staff and other adults; to clarify the requirements for programs for parents and their dependent children and for structured therapeutic children's services provided in connection with their parents' treatment; to specify that extension sites must be registered and approved prior to service provision at the site; to add requirements for small family living environments to this subchapter and to clarify that small family living environments are only for outpatient clients who need temporary living arrangements in order to access services; to consolidate the rules on court commitment services in one place; to specify that residential programs are responsible for the meals of clients who are scheduled to be away from the facility at meal time; and to clarify the requirements regarding medication policies and procedures including inventory, disposal, storage, administration and self-administration as well as training for staff who administer medication.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be improved programs and services for all clients from facilities providing chemical dependency treatment services. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments and new sections.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments and new sections are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 464.

§148.201. General Information.

(a) Every program shall comply with the rules in §148.202 of this title (relating to Services Required in All Programs) and §148.203 of this title (relating to Client Transportation).

(b)-(c) (No change.)

§148.202. Services Required In All Programs.

(a) All services shall be delivered according to the [~~a~~] written program description referenced in §148.73 of this title (relating to Policies, Procedures, and Licensure Rules). The program shall maintain plan [~~which includes~~] a service schedule listing services provided and timeframes in which they are provided.

(b)-(c) (No change.)

(d) Every residential program shall adopt medication procedures so that clients can continue taking prescribed medication after admission. [~~Every residential client shall have a medical history and physical examination that is signed by a physician, physician assistant, or advanced nurse practitioner.~~]

(e) Chemical dependency education shall follow a course curriculum [~~outline~~] that identifies lecture topics and major points to be discussed. All educational sessions shall include opportunities for client participation and discussion.

(f) (No change.)

(g) The program shall provide [~~HIV~~] education about tuberculosis, HIV, Hepatitis C, and other sexually transmitted diseases based on the *Texas Commission on Alcohol and Drug Abuse Workplace and Education Guidelines for HIV and Other Communicable Diseases* [~~Model Workplace Guidelines developed by the Texas Department of Health~~].

(h)-(i) (No change.)

(j) The program shall provide case management for clients with regard [~~refer clients~~] to physical health, mental health, and ancillary services necessary to meet treatment goals and conduct follow-up. Residential programs shall ensure clients have access to appropriate physical [~~health care~~] and mental health services.

(k) Programs that admit females of child-bearing age shall ensure that at least one staff person has training and/or experience in providing specialized care for substance-abusing pregnant females. In addition, the program shall:

(1) (No change.)

(2) implement the procedures whenever a pregnant female is admitted; [~~and~~]

(3) refer pregnant clients who are not receiving prenatal care to an appropriate health care provider and monitor follow-through; and

(4) provide gender specific services.

(l) (No change.)

§148.203. Client Transportation.

(a) The facility shall have a written policy on the use of facility vehicles and/or staff to transport clients.

(b) If the facility allows the use of facility vehicles and/or staff to transport clients, it must adopt transportation procedures which include the following elements:

(1) Any vehicle used to transport a client must have appropriate insurance coverage for business use with a current safety inspection sticker and license.

(2) All vehicles used to transport clients must be maintained in safe driving condition.

(3) Drivers must be at least 21 years of age and have a valid driver's license.

(4) An individual with more than two moving violations during the previous five years shall not be allowed to transport clients.

(5) Drivers and passengers must wear seatbelts at all times the vehicle is in operation.

(6) A vehicle shall not be used to transport more passengers than designated by the manufacturer.

(7) Drivers shall not use cellular phones while driving.

(8) Use of tobacco products shall not be allowed in the vehicle.

(9) Every vehicle used for client transportation shall have a fully stocked first aid kit and A:B:C fire extinguisher that are easily accessible.

§148.211. Level I Treatment (Outpatient or Residential Detoxification).

(a) Every client shall have a medical history and physical as required in §148.291 of this title (relating to Detoxification History and Assessment).

[~~(1) Residential clients shall have the medical history and physical completed and filed within 24 hours of admission. If the facility cannot meet this deadline because of exceptional circumstances, the circumstances shall be documented in the client record. Until a client's medical history and physical is complete, staff shall observe the client closely and monitor vital signs.~~]

[~~(2) Outpatient clients shall have the medical history and physical completed and available for review by program staff before admission.~~]

(b) The program shall provide continuous supervision for clients.

(1) In residential programs, direct care staff shall be awake and on duty where the clients are located [~~on site~~] 24 hours a day.

(A) During day and evening hours, at least two awake staff shall be on duty for the first 12 clients, with one more person on duty for each additional one to 16 clients.

(B) At night, at least one awake staff member shall be on duty for the first 12 clients, with one more person on duty for each additional one to 16 clients. Night staff shall conduct and document hourly checks while clients are sleeping.

(2) In outpatient programs, direct care staff shall be awake and on site whenever a client is on site. Clients shall have access to an on-call health care professional with detoxification experience [~~staff~~] 24 hours a day.

(c) If the program accepts clients with acute withdrawal symptoms or a history of acute withdrawal symptoms, the program shall have:

(1) a licensed vocational nurse or registered nurse with detoxification experience on duty during all hours of operation; and

(2) a physician on call 24 hours a day.

(d) Level of observation shall be based on medical recommendations and program design.

(e) A physician shall approve all medical policies, procedures, guidelines, tools, and forms, which shall include:

(1) screening instruments (including a medical risk assessment) and procedures;

(2) the form used for the admission and medical history and physical;

(3) [~~(2)~~] treatment protocol or standing orders for each major drug category [~~chemical the program is prepared to detoxify~~]; and

(4) [~~(3)~~] emergency procedures.

(f) The clinical supervisor shall be a physician, physician assistant, advanced practice nurse, or registered nurse.

(g) The program shall:

(1) ensure continuous access to emergency medical care;

(2) provide clients access to mental health evaluation and linkage with mental health services when indicated; and

(3) conduct at least one counseling session [~~use written procedures~~] to encourage clients to seek appropriate treatment after detoxification.

(h) Direct care staff shall complete training in detoxification and special treatment procedures as described in §148.114 of this title (relating to Special Training Requirements).

(i) Staff shall help each client develop an individualized post-detoxification plan that includes appropriate referrals.

§148.231. Adolescents.

(a) (No change.)

(b) Residential facilities shall have separate sleeping areas, bedrooms, [~~bedroom areas~~] and bathrooms for adults and adolescents and for males and females. The facility shall have adequate barriers to divide the populations.

(c)-(d) (No change.)

(e) The program shall involve the adolescent's family or an alternate support system in the treatment process or document why this is not happening. [~~Providers shall observe legal or other statutory laws which define the adult population to be served when it is different from the commission's definition.~~]

(f)-(h) (No change.)

(i) The facility shall ensure that staff who plan, supervise, or provide chemical dependency education or counseling to adolescents have specialized education or training as required in §148.114 of this title (relating to Special Training Requirements) [~~in the emotional, mental health, and chemical dependency problems of adolescents and appropriate treatment for them~~].

[~~(1) Individuals who plan or supervise such services shall be qualified credentialed counselors.~~]

[~~(2) Direct care employees shall have training in human adolescent development, family systems, adolescent psychopathology and mental health, chemical dependency and addiction in adolescents, and adolescent socialization issues.~~]

(j)-(m) (No change.)

(n) The treatment plan shall address adolescent needs and issues and family relationships.

(o) The program shall prohibit adolescent clients from using tobacco products on the program site or during structured program activities. [~~The program shall involve the adolescent's family or an alternate support system in the treatment process or document why this is not happening.~~]

(p) (No change.)

(q) Staff and other adults shall not use tobacco products in the presence of adolescent clients.

[(r) The program shall prohibit adolescent clients from using tobacco products on the program site or during structured program activities.]

§148.232. Parents and Their Dependent Children.

(a) (No change.)

(b) Education, counseling, and rehabilitation services shall address:

(1) (No change.)

(2) parenting education, skills development and support; [and]

(3) health and nutrition, including health care of children; and

(4) child development.

(c) The program shall have a procedure to regularly assess parent-child interactions. Any identified needs shall be documented and addressed in treatment.

(1) The assessment shall include documented examples of incidents and behaviors.

(2) Identified issues and problems will be addressed in individual counseling or parenting sessions.

(d) (No change.)

(e) The program shall provide or arrange for childcare with a qualified provider while the parent participates in treatment activities. Before supervising children independently, the provider shall have infant/child CPR certification and at least eight hours of training in the following areas:

(1) chemical dependency and its impact on the family;

(2) child development and age-appropriate activities;

(3) child health and safety;

(4) standard [universal] precautions;

(5) appropriate child supervision techniques; and

(6) signs of child abuse.

(f)-(h) (No change.)

(i) If the program provides childcare on site, it must provide a safe and sanitary environment appropriate for children. The physical plant shall meet the requirements listed in §148.372 of this title (relating to Physical Plant Requirements for Children).

[(1) Heating equipment shall be cool enough to touch safely.]

[(2) Heavy furniture and equipment shall be securely installed to prevent tipping or collapsing.]

[(3) Electrical outlets accessible to children shall have child-proof covers or safety devices.]

[(4) Air conditioners, fans, and heating units shall be mounted out of children's reach or have safety guards.]

[(5) Grounds shall be kept free of standing water and sharp objects.]

[(6) Tap water shall be no hotter than 110 degrees Fahrenheit.]

[(7) Items potentially dangerous for children shall be stored safely.]

[(8) Areas that are more than two feet above ground level (such as stairs, porches, and platforms) shall have railings low enough for children to reach.]

[(9) Tanks, ditches, sewer pipes, dangerous machinery, and other hazards shall be fenced.]

[(10) Outdoor play areas shall be enclosed by a fence at least four feet high if:]

[(A) the play area is located close to a road, pool, deep ditch, or other hazard; or]

[(B) there are more than six children in the group.]

[(11) Outdoor play equipment shall be in a safe location and securely anchored (unless portable by design).]

[(12) Buildings, furniture, and equipment shall not have openings or angles that could trap or injure a child's head.]

[(13) Swing seats shall be durable, lightweight, and relatively pliable.]

§148.233. Structured Therapeutic Children's Services.

(a) General requirements for programs that provide structured services for dependent children as part of the parent's treatment.

(1) The program shall ensure that children are directly supervised by parents or qualified childcare providers at all times. The program is always responsible for providing oversight and guidance to ensure children receive appropriate care when they are supervised by clients.

(2) The program shall have a written policy and a current schedule showing who is responsible for the children at all times.

(3) The program shall provide a variety of age-appropriate equipment, toys, and learning materials.

(4) Standards protecting the health, safety, and welfare of clients apply to their children.

(5) Behavior management shall be fair, reasonable, consistent, and related to the child's behavior. Physical discipline is prohibited.

(b) Staffing.

(1) Every program that provides structured therapeutic children's services shall have a supervisor or consultant with at least:

(A) (No change.)

(B) one year of documented, supervised experience providing services to children.

(2) Before supervising children independently, direct care employees shall have infant/child [infant] CPR certification and at least eight hours of training in:

(A) chemical dependency and its impact on the family;

(B) child development and age-appropriate activities;

(C) child health and safety;

(D) standard [universal] precautions;

(E) appropriate child supervision techniques; and

(F) signs of child abuse.

(3)-(5) (No change.)

(c) Safety practices.

(1) The emergency evacuation procedures shall include provisions for children [~~approved by the fire marshal~~].

(2)-(3) (No change.)

(4) The program site shall meet the additional physical plant requirements listed in §148.272 of this title (Relating to Physical Plant Requirements for Children) [~~§148.232 of this title (relating to Parents and Their Dependent Children).~~]

(d) Health practices.

(1) (No change.)

(2) Staff, volunteers, and parents shall use standard [~~universal~~] precautions when caring for children other than their own.

(3)-(4) (No change.)

(e) Residential Programs shall also comply with the following requirements.

(1) Childcare programs shall include pre-school, after school, and homework support. The daily activity schedule shall include a variety of structured and unstructured age-appropriate activities.

(2)-(4) (No change.)

(5) Each child shall have a medical assessment from a medical doctor, physician assistant, advanced practice nurse, or registered nurse within 96 hours of admission. Copies of an assessment performed up to seven days before admission may be used. Children shall also have access to primary pediatric care, including immunizations.

(6)-(8) (No change.)

(9) The program shall provide an adequate diet for childhood growth and development, including two snacks per day. Menus for children shall be approved as described in §148.252 of this title (relating to Meals in Residential Programs).

[~~(10) Rooms and buildings shall have at least 30 usable square feet of indoor activity space per child when occupied by children.~~]

[~~(11) Where children share sleeping space with parents, bedrooms shall have at least 30 usable square feet per infant (in cribs) and 40 usable square feet per child.~~]

[~~(12) Nurseries shall have 35 usable square feet per crib.~~]

[~~(13) The program site shall have adequate outdoor play space with a safe route of access.~~]

§148.236. Extension Services.

(a) Programs that provide services at a site that is not owned, leased, operated, or controlled by the facility shall develop procedures to protect the confidentiality of client-identifying information.

(1) Client records shall be accounted for and secured in permanent storage at an approved site at the end of each work day.

(2) (No change.)

(b) (No change.)

(c) The facility shall not provide services at an extension site until the site has been registered and approved by the commission's licensure department. [~~The provider shall not provide treatment at a school or other site which is prohibited by law.~~]

§148.237. Small Family Living Environments.

(a) A small family living environment is a single apartment unit, house, or similar residence (housing no more than six people) which is available to adult clients participating in an outpatient program.

(b) Small family living environments shall be permitted only under these circumstances:

(1) housing arrangements are offered as an option to outpatient clients needing temporary living arrangements in order to access services;

(2) clients using the housing are adults;

(3) use of the housing is completely voluntary; it is neither required nor implied as a condition of participation;

(4) clients using the housing are not discriminated against or given preference over other clients, either in admissions or services; and

(5) housing is used by no more than 25% of the clients in a program.

(c) A small family living environment is not an acceptable option for clients who need residential treatment. A client may be admitted to a small family living environment only when all of the following conditions are met.

(1) The client is participating in a Level III or Level IV outpatient treatment program.

(2) A QCC determines that the client can reasonably be expected to remain abstinent without 24-hour supervision.

(3) The client demonstrates sufficient stability and life skills to function adequately without staff supervision.

(d) Each client who lives in a small family living environment shall sign a consent before admission that includes the following provisions:

(1) housing is offered as an option and is not required as a condition for participation in the program;

(2) use of the housing is completely voluntary;

(3) clients using the housing are not discriminated against or given preference over other program participants, either in admissions or services;

(4) the housing units are not licensed facilities and do not meet the health and safety standards required in residential facilities;

(5) the facility is responsible for the selection, inspection, approval, and monitoring of these units regarding building safety, maintenance, repair, fire safety, and sanitation, including all required inspections and approvals; and

(6) clients may leave the housing at any time without affecting their treatment services.

(e) If the unit is owned or operated by another entity, the facility shall have a written agreement that defines responsibilities and addresses:

(1) finances;

(2) maintenance; and

(3) client confidentiality.

§148.238. Court Commitment Services.

(a) Facilities accepting court commitments shall be licensed to provide the appropriate level of service:

(1) emergency detention: Level I or Level II residential services;

(2) adult inpatient involuntary civil or criminal commitments: Level II or Level III residential services for adults;

(3) adult outpatient involuntary civil or criminal commitments: Level II or Level III outpatient services;

(4) juvenile inpatient commitments: Level II residential services for adolescents;

(5) juvenile outpatient commitments: Level II or Level III outpatient services for adolescents.

(b) The facility's court commitment program shall implement procedures for compliance with Texas Health and Safety Code, Chapter 462.

(c) The facility shall have a procedure for reporting unauthorized departures to the referring courts. Verbal report shall be made immediately, with written confirmation within 24 hours.

(d) The facility shall ensure that the designated staff members working with the court commitment program develop a working relationship with the judiciary. Staff members shall provide the judiciary with sufficient information in writing on the program design, treatment methods, and admission processes to assist the judiciary in committing appropriate clients to the facility.

(e) The facility shall also develop and implement written referral procedures that incorporate other available resources to assist in the referral and placement of clients that are inappropriate for admission.

(f) The program shall provide the judiciary with sufficient written information about its program design, treatment methods, admission processes, lengths of stay and continuum of care to assist the judiciary in committing appropriate clients to the facility.

(g) The program shall accept all chemical dependency clients brought to the facility under an emergency detention warrant, order of protective custody, or civil court order for treatment. A general pre-screening and assessment of the individual seeking a civil court commitment for chemical dependency may be used to determine whether the client may be appropriate for chemical dependency treatment. A formal screening and assessment is not required before admission. For reporting purposes, only clients brought to the facility pursuant to an emergency detention or civil court order or originally referred from such an order, will be counted as court commitment clients.

(h) The program's admission criteria shall not exclude individuals who meet the criteria for emergency detention or civil court ordered chemical dependency treatment, including individuals who are likely to cause serious harm to themselves or others.

(i) The program shall have policies and procedures for crisis stabilization and medically-supervised detoxification. A Level I program shall provide these services directly. All programs providing other levels of service shall either provide these services directly or have access to them as documented in written agreements.

(j) The program shall adopt protocols for the stabilization and management of clients who are a danger to themselves or others as required by §462.062 of the Texas Health and Safety Code.

(k) A program that accepts emergency detentions shall adopt a policy authorizing use of special treatment procedures and implement procedures that conform with §148.183 of this title (relating to Special Treatment Procedures) and §148.184 of this title (relating to Documenting Special Treatment Procedures).

(l) The client record shall contain documentation of the conditions and/or behaviors that caused the client's entry into the civil court commitment process.

(m) The client record shall also contain copies of the following documents:

(1) order for emergency detention (if applicable);

(2) application for court-ordered treatment services;

(3) two physician's certificates of medical examination for chemical dependency;

(4) order of protective custody for chemical dependency;

(5) notice of hearing of application for court-ordered chemical dependency treatment;

(6) waiver of attendance at hearing (if applicable);

(7) finding of probable cause hearing;

(8) order of commitment or writ of commitment;

(9) transfer order (if applicable) and

(10) modification order of the initial petition for court ordered treatment (if applicable).

(n) The facility's court commitment program shall provide training for at least two designated staff to ensure they understand and comply with court commitment statutes, regulations, and procedures.

§148.252. Meals in Residential Programs.

(a)-(c) (No change.)

(d) The program shall provide at least three meals daily, with no more than 14 hours between any two meals. The program shall provide package meals or make other arrangements for clients who are scheduled to be away from the facility during meal time.

(e) (No change.)

§148.261. General Provisions for Medication.

(a) The facility shall implement [~~adopt~~] written procedures describing the handling, administration, documentation, disposal, inventory, and use of medication. This includes procedures for handling medication errors and adverse reactions.

(b) (No change.)

(c) Prescription medication [~~Medication~~] shall be used only for therapeutic and medical purposes and shall [~~not~~] be administered [~~except~~] as prescribed by the appropriately licensed professional [~~or directed~~].

§148.262. Medication Storage.

(a) Prescription and over-the-counter medications [~~Medications~~], syringes, and needles shall be accessible only to staff who are authorized to provide medication. This does not include vitamins and mineral supplements.

(b) The program shall keep all prescription and over-the-counter [~~non-prescription~~] medications, syringes, and needles in

locked storage unless a client is authorized to keep the medication in his or her possession. Used needles and syringes shall be placed in rigid, puncture-proof containers.

(c) (No change.)

(d) The program shall store all medication under appropriate conditions.

(1) Drugs requiring refrigeration shall be stored in a locked compartment separate from food items.

(2) Topical medications shall be separated from oral and injectable medications in a labeled box, drawer, compartment, or shelf.

(e) Clients may not keep prescription [~~or non-prescription~~] medication in their personal possession on site without specific written authorization filed in the client record from a physician or from a licensed dentist, podiatrist, [~~or a properly authorized~~] physician assistant or advanced practice nurse practicing within licensure requirements. Clients may not keep over-the-counter medication in their personal possession on site without specific written authorization filed in the client record from the supervising health care professional or program director. Staff shall ensure that authorized clients keep medication on their persons or safely stored and inaccessible to other clients.

(f) (No change.)

(g) The facility must ensure that prescription medication is in a [~~properly labeled~~] container labeled by the pharmacy. [~~If clients are required to take medication with them off site, the medication must be in an appropriate container with an appropriate label.~~]

(1) If the medication is a sample, the medication must have an attached, signed label from the prescribing professional that includes the name of the client, name of medication, dosage, route and frequency of the prescribed medication, prescribed date, medication expiration date, and initial dosage amount in the container. A copy of this information must be filed in the client record.

(2) If clients are required to take medication with them off site, the medication must be in a container labeled by the pharmacy or prescribing professional.

§148.263. Medication Inventory.

(a) (No change.)

(b) Staff shall inventory and inspect all stored prescription medication at least daily [~~monthly~~].

(c) The inventory system shall include a centralized medication inventory form with [~~documentation of~~] the following information about each container of prescription medication:

(1) date the medication entered the facility;

(2) initial amount of medication;

(3) amount administered to the client as recorded on the client administration record;

(4) amount present at each inventory;

(5) amount present at disposition; and

(6) daily [~~monthly~~] reconciliation between the administration record and the inventory.

(d) The staff member conducting the inventory shall sign and date the inventory sheet. When a discrepancy exists between the administration record and the inventory count form, a note explaining the reason for the discrepancy or action taken to reconcile/correct the discrepancy shall be signed by the staff member conducting the inventory and kept with the medication inventory forms.

§148.264. Disposing of Medication.

(a) Staff shall separate the following medication immediately and dispose of it within 30 days:

(1) (No change.)

(2) prescription medication remaining after the prescribed length of therapy; [~~and~~]

(3) medication prescribed for clients who have left the program; and

(4) medication that has spoiled or been refused by the client.

(b) (No change.)

(c) Two staff members shall witness and document disposal, including amount of medication disposed and method used.

§148.265. Staff Qualifications and Training.

The facility shall ensure that staff who handle or administer medication are properly credentialed and trained.

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

(4) Staff who supervise self-administration of prescription or over-the-counter medications shall be trained as described in §148.114 of this title (relating to Special Training Requirements).

§148.266. Authorization for Medication.

(a) Staff shall not give prescription medication to a client without a prescription or order from a physicianor from a licensed dentist, podiatrist, [~~or an authorized~~] physician assistant or advanced practice nurse (prescribing within licensure limitations).

(b) Each written order for medication shall include:

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

(4) the signature of the prescribing professional [~~physician, physician assistant, or advanced practice nurse~~].

§148.267. Administration of [~~Prescription~~] Medication.

(a) Staff shall provide [~~Licensed health professionals shall administer~~] and discontinue medication exactly as ordered.

(b) Each dose of prescription and over-the-counter medication taken by the client shall be documented [~~Licensed health professionals shall document each dose administered~~] in the client's medication record.

(c) The medication [~~administration~~] record shall include:

(1) the client's name;

(2) drug allergies (or the absence of known allergies);

(3) the name and dose of each medication;

(4) the frequency and route of each medication;

(5) the date and time of each dose [~~administered~~]; and

(6) the signature of the staff person who administered or supervised each dose.

(d) When a client is absent for scheduled doses of prescription medication, staff shall take action to ensure that the client receives the medication as prescribed.

(e) When [~~a medication error is identified or~~] a client appears to have an adverse reaction to medication, a licensed health professional or other staff member shall:

(1) notify the prescribing professional or another [~~a~~] physician, dentist, podiatrist, [~~or an authorized~~] physician assistant or advanced practice nurse (preferably the prescribing professional) within a reasonable amount of time based on the medication and client status;

(2) complete an incident report; and

(3) document the facts[~~and the physician (or physician assistant or advanced practice nurse) contact~~] in the client record, including the date and time of notification and any other related action taken.

(f) When a medication error is identified, a staff member shall:

(1) contact a licensed health professional or a pharmacist to clarify what action should or should not be taken;

(2) complete an incident report; and

(3) document the facts in the client record, including the date, time, name and telephone number of the person contacted, the recommendation, and any other related action taken.

§148.268. Self-Administration of Medication.

(a)-(b) (No change.)

(c) Staff shall document each dose supervised in the client's record as required in §148.267 of this title (relating to Administration of Medication).

~~[(d) The medication record shall include:]~~

~~[(1) the client's name;]~~

~~[(2) drug allergies (or the absence of known allergies);]~~

~~[(3) the name and dose of each medication;]~~

~~[(4) the frequency and route of each medication;]~~

~~[(5) the date and time of each dose supervised; and]~~

~~[(6) the signature of the staff person who supervised each dose.]~~

~~[(e) When a client is absent for scheduled doses, staff shall take action to ensure that the client receives the medication as prescribed.]~~

~~[(f) When a medication error is identified or a client appears to have an adverse reaction to medication, staff shall:]~~

~~[(1) notify a physician or an authorized physician assistant or advanced practice nurse;]~~

~~[(2) complete an incident report; and]~~

~~[(3) document the facts and the physician (or physician assistant or advanced practice nurse) contact in the client record.]~~

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

Filed with the Office of the Secretary of State, on June 14, 1999.

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Mark Smock
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40 TAC §§148.212-148.214

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§148.212-148.214 concerning Program Services. These sections contain information on Level II treatment (day treatment or intensive residential); Level III treatment (residential or intensive out patient); and Level IV treatment (transitional outpatient or transitional residential).

These amendments are proposed to clarify and/or add requirements for Level II, III and IV treatment programs including setting minimum requirements for those admitted to each program, implementing new staff to client ratios during sleeping hours, ensuring that every residential client has a medical history and physical examination, conducting hourly checks while clients are sleeping in Level II and III treatment programs, and requiring individual counseling at least once a month in Level IV treatment programs.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be improved services for clients from facilities providing Level II, Level III and/or Level IV chemical dependency treatment services. There is no additional effect on small businesses. The anticipated economic cost to persons required to comply with the proposed amendments varies. The cost is related to implementing the 1:32 staff-to-client ratio during sleeping hours. There will be no additional cost for programs with less than 33 beds. The additional cost for larger programs will depend on current staffing patterns. It is estimated that it could cost as much as $30,000 per year for every additional 32 beds.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 464.

§148.212. Level II Treatment (Day Treatment or Intensive Residential).

(a) All clients admitted to Level II shall not have [~~be~~]:

(1) a documented, reported, or observed medical condition that requires immediate medical treatment or continuous medical supervision (as determined by a prudent lay person); or [~~medically stable; and~~]

(2) an observable physical or mental impairment that prevents the client from participating [~~able to participate~~] in treatment.

(b) The program shall have enough staff to provide close supervision and individualized treatment, even if this requires more staff than indicated by the minimum staff-to-client ratios listed in this section.

(c) Counselor caseloads shall not exceed ten clients for each counselor.

(d) Direct care staff shall be awake and on site during all hours of program operation. [~~The direct care staff-to-client ratio shall be at least 1:16 during:~~]

(1) In outpatient programs, the direct care staff-to-client ratio shall be at least 1:16 during all hours of operation. [~~the hours clients are awake in residential programs; and~~]

(2) In residential programs, the direct care staff-to-client ratio shall be at least 1:16 during the hours clients are awake and 1:32 when clients are asleep. [~~all hours of operation in outpatient programs.~~]

(3) Night staff shall conduct and document hourly checks while clients are sleeping.

(e) Counselors shall complete a comprehensive client assessment and initial treatment recommendations within three individual service days of admission for all clients transferred from Level I or admitted directly to a Level II program.

(f) An individualized treatment plan shall be completed for all clients within five individual service days of admission.

(g) The facility shall deliver an average of 20 hours of structured activities per week for each client, including:

(1) three hours of chemical dependency counseling (including at least one hour of individual counseling);

(2) 14 hours of additional counseling, chemical dependency education, or life skills training; and

(3) three hours of structured social and/or recreational activities.

(h) Every residential client shall have a medical history and physical examination as required by §148.301 of this title (relating to Client History and Assessment). [~~Each residential client shall have an opportunity to participate in physical recreation at least weekly.~~]

(i) Program staff shall offer related services to identified significant others.

§148.213. Level III Treatment (Residential or Intensive Outpatient).

(a) All clients admitted to Level III shall be able to function with limited supervision and support and shall not have:

(1) a documented, reported, or observed medical condition that requires immediate medical treatment or continuous medical supervision (as determined by a prudent lay person); or [~~medically stable; and~~]

(2) an observable physical or mental impairment that prevents the client from participating in treatment [~~able to function with limited supervision and support~~].

(b) The program shall have enough staff to meet treatment needs within the context of the program description, even if this requires more staff than indicated by the minimum staff-to-client ratios listed in this section.

(c) Counselor caseloads shall not exceed 16 clients per counselor.

(d) Direct care staff shall be awake and on site during all hours of program operation. [~~The direct care staff-to-client ratio shall be at least 1:16 during:~~]

(1) In outpatient programs, the direct care staff-to-client ratio shall be at least 1:16 during all hours of operation. [~~the hours clients are awake in residential programs; and~~]

(2) In residential programs, the direct care staff-to-client ratio shall be at least 1:16 during the hours clients are awake and 1:32 when clients are asleep [~~all hours of operation in outpatient programs~~].

(3) Night staff shall conduct and document hourly checks while clients are sleeping.

(e) For clients transferred from Level I or admitted directly to this level of treatment, counselors shall complete a comprehensive client assessment and initial treatment recommendations within three [~~five~~] individual service days of admission.

(f) All clients shall have an individualized treatment plan within five [~~seven~~] individual service days of admission.

(g) The facility shall deliver an average of ten hours of structured activities per week for each client, including at least two hours of chemical dependency counseling (with at least one hour of individual counseling every two weeks) and eight hours of additional counseling, chemical dependency education, or life skills training.

(h) Every residential client shall have a medical history and physical examination completed and filed in the client record within 96 hours of admission, as required by §148.301 of this title (relating to Client History and Assessment).

§148.214. Level IV Treatment (Transitional Outpatient or Transitional Residential).

(a) All clients admitted to Level IV programs shall be able to function with minimal supervision and support and shall not have:

(1) a documented, reported, or observed medical condition that requires immediate medical treatment or continuous medical supervision (as determined by a prudent lay person); or [~~medically stable; and~~]

(2) an observable physical or mental impairment that prevents the client from participating in treatment [~~able to function with minimal supervision and support~~].

(b) A Level IV program shall not admit a client transferred directly from Level I without written justification in the client record.

(c) The program shall have enough staff to provide clients with adequate support and guidance, even if this requires more staff than indicated by the minimum staff-to-client ratios listed in this section.

(d) Counselor caseloads shall not exceed 20 clients per counselor in residential programs. Outpatient programs shall set limits on counselor caseload size that ensure effective, individualized treatment and rehabilitation. Criteria used to set the caseload size shall be documented.

(e) The program shall be adequately staffed during hours of operation to ensure effective service delivery.

(f) In residential programs, the awake direct care staff-to-client ratio shall be at least 1:20 [~~1:16~~] during the hours clients are awake and at least 1:32 when clients are sleeping. Night staff shall conduct hourly checks while clients are sleeping. [~~At least one staff person shall be on site and accessible to clients during sleeping hours.~~]

(g) For clients transferred from Level I or admitted directly to this level of treatment, counselors shall complete a comprehensive client assessment and initial treatment recommendations within three individual service days of admission. In outpatient programs, this period shall not exceed 45 calendar days. [~~within:~~]

[~~(1) five individual service days of admission in residential programs; and~~]

[~~(2) 45 calendar days of admission in outpatient programs.~~]

(h) All clients shall have an individualized treatment plan within five individual service days of admission. In outpatient programs, this period shall not exceed 45 calendar days. [~~:~~]

[~~(1) seven individual service days of admission in residential programs; and~~]

[~~(2) 45 calendar days of admission in outpatient programs.~~]

(i) The facility shall deliver an average of two hours of structured activities per week for each client, including at least one hour of chemical dependency counseling and one hour of additional counseling, life skills training, or chemical dependency education. Individual counseling shall be provided at least once a month.

(j) Every residential client shall have a medical history and physical examination as required by §148.301 of this title (relating to Client History and Assessment).

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

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40 TAC §148.235

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §148.235 concerning Program Services. This section contains the requirements for pharmocotherapy programs. The repeal is proposed because the commission is no longer required to license methadone programs. These programs are now under the sole regulatory jurisdiction of the Texas Department of Health.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of the proposed repeal.

Ms. Bleier has also determined that for each year of the first five years the repeal is in effect the anticipated public benefit will be clarity about the regulatory jurisdiction of pharmocotherapy programs. There will be no effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

The repeal is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed repeal is the Texas Health and Safety Code, Chapter 464.

§148.235. Pharmocotherapy 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.

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Subchapter E. Treatment Process

40 TAC §§148.281, 148.282, 148.284, 148.291-148.293, 148.301-148.304, 148.322-148.324

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§148.281, 148.282, 148.284, 148.291-148.293, 148.301-148.304, and 148.322-148.324 concerning Treatment Process. These sections contain information on: admission criteria; admission determination; client orientation; detoxification history and assessment; detoxification plan; detoxification notes; client history and assessment; treatment plan; progress notes; treatment plan reviews; discharge plan; discharge summary; and discharge follow-up.

These amendments are proposed to clarify the typical age range served by adolescent and adult programs, when exceptions may be warranted and how they must be approved; to describe the admission determination process; to require that information about searches the program may use be included in

client orientation; to expand the requirements related to detoxification history and assessment including reducing the time allowed to complete the detoxification history to 24 hours; to require that goals be established as part of the detoxification plan and that progress or lack of progress toward those goals be addressed in detoxification notes; to specify the process for and requirements of the client history and assessment; to describe the treatment plan process and document; to clarify what is to be included in progress notes; to specify that programs must define in writing the intervals at which treatment plans will be reviewed; to mandate that the treatment plan must be revised when the client enters a new level of service; to require that either family members who were initially involved in the initial treatment planning participate in reviews or that the counselor must document why this does not occur; to specify that discharge planning begins at the time of admission and must be completed before the client's scheduled discharge; to state what must be addressed in the discharge plan; and to institute a time limit of 90 days after discharge for follow-up to occur.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be improved chemical dependency treatment programs for all clients receiving services from licensed facilities. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 464.

§148.281. Admission Criteria.

(a) (No change.)

(b) The criteria shall describe a client population appropriate for the program and specify the age group to be served.

(1) Adolescent programs serve youth 13 to 17 years of age. However, children who are 10 through 12 years of age and young adults 18 through 20 years of age may be admitted to an adolescent program only when the assessment indicates that the individual's needs, experiences, and behavior are similar to those of adolescent clients.

(2) Adult programs serve individuals 18 years of age or older. However, adolescents who are 17 years of age may be admitted to an adult program when they are referred by the criminal justice system or when the individual's needs, experiences, and behavior indicate that treatment in an adult program is clinically appropriate.

(3) Each exception shall be approved in writing by the program director.

(c)-(d) (No change.)

§148.282. Admission Determination [~~Screening~~].

(a) Every client admitted to the program shall meet the diagnostic admission criteria.

(1) In programs providing Level II, III, or IV treatment, a QCC shall assess the applicant to determine if the applicant meets the diagnostic and other admission criteria and recommend an appropriate level of treatment [~~screening shall be conducted by a chemical dependency counselor~~]. If a counselor intern assesses the applicant [~~conducts the screening~~], the intern shall consult with a qualified credentialed counselor who authorizes the admission and signs the admission form.

(2) In Level I programs, applicants shall be assessed [~~screening shall be done~~] by a licensed health professional. Non-physicians shall have at least one year of detoxification treatment experience.

(A) A chemical dependency counselor with one year of detoxification experience may assess the applicant [~~do the screening~~] with consultation from a licensed health professional who authorizes the admission and signs the admission form.

(B) In outpatient [~~and supported living~~] detoxification programs, a physician, physician assistant, or advanced practice nurse shall examine the applicant [~~client~~] face-to-face, authorize the admission, and sign the admission form.

(3) Clients shall be treated in the least restrictive environment available that best meets their needs.

(b) Justification for admission (based on the diagnostic and other admission criteria) shall be signed by the individual authorizing admission and filed in the client record at admission.

(c) If an individual is not admitted, the program shall refer and assist the applicant to obtain appropriate services.

(d) The provider shall maintain a written log that lists all applicants [~~clients~~] found to be ineligible or inappropriate for admission. The documentation shall include the reason the individual was not admitted and where the individual was referred.

§148.284. Client Orientation.

(a)-(b) (No change.)

(c) The orientation shall include:

(1)-(4) (No change.)

(5) any behavior management procedures or searches used to enforce program rules;

(6)-(8) (No change.)

(d)-(e) (No change.)

§148.291. Detoxification History and Assessment.

(a) A chemical dependency counselor or licensed health professional shall collect and document the following information:

(1) alcohol and other drug use, past and present;

(2) past psychiatric and chemical dependency treatment;

(3) significant medical history , including personal and family medical history, allergies, medications, and current health status;

(4) current living situation;

(5) current employment situation; and

(6) current emotional state and behavioral functioning.

(b) The program shall obtain enough medical and psychosocial information about the client to provide a clear understanding of the client's present status.

(c) The detoxification history shall be [~~initiated within 24 hours of admission, and~~] completed and filed in the client record within 24 [~~72~~] hours of admission. If an emergency or the client's physical condition prevents documentation within 24 hours, staff shall explain the circumstances in the client record and obtain the information as soon as possible.

(d) Each client shall have a [~~A~~] medical history and physical examination signed by a physician, physician assistant, or advanced nurse practitioner. [~~shall be completed and filed in the client record within 24 hours of admission. A medical history and physical examination completed during the 24 hours preceding admission may be substituted if it is approved by the program's physician, physician assistant, or advanced practice nurse.~~]

(1) Residential clients shall have the medical history and physical completed and filed within 24 hours of admission. If the facility cannot meet this deadline because of exceptional circumstances, the circumstances shall be documented in the client record. Until a client's medical history and physical is complete, staff shall observe the client closely and monitor vital signs.

(2) A medical history and physical examination completed during the 24 hours preceding admission may be substituted if it is approved by the program's physician, physician assistant, or advanced practice nurse.

(3) Outpatient clients shall have the medical history and physical completed and available for review by program staff before admission.

§148.292. Detoxification [~~Stabilization~~] Plan.

(a) A clinical staff person authorized by the program shall identify the client's short term needs and establish appropriate goals (based on the detoxification history, the medical history, and the physical examination) and develop an appropriate detoxification plan.

(b) The detoxification plan shall be reviewed and signed by a physician or another licensed health professional. Non-physicians shall have at least one year of detoxification experience.

(c) The client shall also sign the detoxification plan.

(d) The completed and signed detoxification plan shall be filed in the client record within 24 hours of admission.

(e) The program shall revise the detoxification plan whenever the client's needs change significantly.

§148.293. Detoxification Notes.

The program shall implement the detoxification plan and document the client's response.

(1) Program staff shall document services provided to the client and progress or lack of progress toward detoxification goals. [~~This may be done by filing a copy of the program schedule in the client record and documenting the client's level of participation.~~]

(2)-(3) (No change.)

§148.301. Client History and Assessment.

(a) A counselor shall document a psychosocial history and assessment that provides a thorough understanding of the client's history and present status. The psychosocial history shall include [~~, including~~]:

(1) circumstances leading to admission;

(2) alcohol and other drug use, past and present;

(3) past psychiatric and chemical dependency treatment;

(4) significant medical history and current health status;

(5) family structure [~~and social history~~];

(6) current living situation, including family involvement with Child Protective Services as applicable;

(7) relationships with family of origin, nuclear family, and significant others;

(8) social history including club or gang involvement if applicable;

(9) [~~(8)~~] education (including school functioning and peer relationships) and vocational training;

(10) [~~(9)~~] employment history (including military) and current status;

(11) [~~(10)~~] legal history and current legal status;

(12) [~~(11)~~] emotional state and behavioral functioning, past and present; and

(13) [~~(12)~~] strengths, weaknesses, and needs.

(b) The program may use a client questionnaire to gather some of the information needed for the psychosocial history [~~evaluation~~], but a counselor shall review and discuss the questionnaire with the client and document the discussion[~~, including additional information needed to provide a clear and comprehensive psychosocial history~~]. The client questionnaire shall not take the place of the psychosocial history and assessment.

(c) (No change.)

(d) A counselor shall complete an assessment of the client based on the psychosocial history. A qualified credentialed counselor shall review and sign the psychosocial history and assessment and/or any updates.

(e) For residential clients, a medical history and physical examination shall be completed and filed in the client record within 96 hours of admission.

(1) The medical history and physical shall be completed and signed by a physician, physician assistant, advanced nurse practitioner, or RN with a bachelor's degree and at least four years of experience in conducting medical histories and physicals. [~~The facility may use a medical history and physical examination completed up to 30 days before admission or received from the referring facility. If the examination was completed more than 96 hours before admission, a licensed health professional must review the information with the client and documents an update within 96 hours of admission.~~]

(2) The facility may use a medical history and physical examination completed up to 30 days before admission or received from the referring facility. [~~When the update reflects a significant change in the client's status, the client shall receive further evaluation from a physician, physician assistant, or advanced practice nurse.~~]

§148.302. Treatment Plan.

(a) A counselor shall develop a written list of the client's problems and needs based on the psychosocial history and assessment.

(b) The counselor and client shall work together to develop an individualized, [~~a~~] written treatment plan that addresses identified problems and needs. Family members shall participate in the treatment planning process, or the counselor shall document why they did not participate. [~~When possible and appropriate, family members and significant others should also participate.~~]

(c) Issues identified in the treatment plan which exceed the expertise of staff shall be identified, and the client shall be referred to a qualified provider as appropriate. All referrals shall be documented in the client record. [~~The program shall involve the client's family or an alternate support system in the treatment process or document why this is not happening.~~]

(d) Goals shall be individualized, realistic, measurable, time specific, appropriate to the level of treatment, and clearly stated [~~state~~] in behavioral terms what the client is expected to achieve during treatment.

(e)-(g) (No change.)

§148.303. Progress Notes.

(a) (No change.)

(b) Program staff shall document all services provided to the client. [~~This may be done by filing a copy of the program schedule in the client record and documenting the client's level of participation in the progress notes.~~] The record shall include individual documentation of all group services [~~if the schedule of services is not followed~~].

(c) (No change.)

(d) Counselors shall write a progress note at least weekly when services are provided. Weekly notes shall describe the client's progress or lack of progress toward stated treatment plan goals and other significant information.

(e) (No change.)

§148.304. Treatment Plan Reviews.

(a) The primary counselor shall meet with the client to review the treatment plan at appropriate intervals defined in writing by the program.

(b) (No change.)

(c) When a client is transferred to a different level of service, the counselor shall document a transfer note in the client record. The treatment plan must be revised when the client enters a new level of service.

(d) (No change.)

(e) Family members who participated in the initial treatment planning shall participate in the treatment plan reviews, or the counselor shall document why they are not participating.

§148.322. Discharge Plan.

(a)-(b) (No change.)

(c) Discharge planning shall begin at the time of admission and be completed [~~occur~~] before the client's scheduled discharge.

(d)-(f) (No change.)

§148.323. Discharge Summary.

(a) The program shall complete a discharge summary for each client, including:.

(1) needs and problems identified at the time of admission, during treatment, and at discharge;

(2) (No change.)

(3) assessment of the client's progress towards goals; [~~and~~]

(4) circumstances of discharge; and

(5) arrangements for aftercare.

(b)-(c) (No change.)

§148.324. Discharge Follow-Up.

The facility shall contact each client no later than 90 days after discharge from the facility and then document the individual's current status or the reason the contact was unsuccessful.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903515
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 349-6733

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Subchapter F. Physical Plant

40 TAC §§148.331, 148.341, 148.353, 148.355, 148.372, 148.373

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§148.331, 148.341, 148.353, 148.355 and proposes new §148.372, and §148.373 concerning Physical Plant. These sections contain information on: general environment; general physical plant provisions; exits; furniture and supplies; physical plant requirements for children; and physical plant requirements for small family living environments.

These amendments and new sections are proposed to require that any needed corrective action plan to ensure compliance with the Americans with Disabilities Act is implemented within a reasonable time frame; to clarify the requirements for private space for confidential interactions; to expand the prohibitions on smoking, firearms and other weapons; to require prohibitions on alcohol, illegal drugs, illegal activities and violence on site; to prohibit the use of recreational vehicles and campers as client sleeping areas; to clarify under what circumstances windows may be smaller than the size stated in the rules; to specify the required ratio of washers and dryers to clients; to specify the physical plant requirements that are specific to programs that provide children's services or childcare on site; and to specify the physical requirements for small family living environments.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be safer and more adequate physical plants in licensed facilities providing chemical dependency treatment services. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments and new sections.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

These amendments and new sections are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 464.

§148.331. General Environment.

(a) (No change.)

(b) The facility shall comply with the Americans with Disabilities Act (ADA). The facility shall maintain documentation that it has conducted a self-inspection to evaluate compliance and implemented a corrective action plan within reasonable time frames to address identified deficiencies.

(c)-(d) (No change.)

(e) The facility shall have private [~~counseling~~] space for counseling, assessments, and other confidential interactions. Staff shall not office in space needed for other activities, and partitions are not acceptable for creating private space.

(f) The facility shall prohibit smoking inside facility buildings and during structured program activities.

(g) (No change.)

(h) Staff shall not provide, distribute, or facilitate access to tobacco products. [~~The facility shall prohibit firearms and double-edged, fixed-blade knives on the site.~~]

(i) Staff shall not use tobacco products in the presence of clients.

(j) The facility shall prohibit firearms and other weapons on the site.

(k) The facility shall prohibit alcohol, illegal drugs, illegal activities, and violence on the site.

§148.341. General Physical Plant Provisions.

(a) All programs shall comply with the following rules.

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

(3) Mobile homes, recreational vehicles, and campers shall not be used for client sleeping areas.

(b)-(c) (No change.)

§148.353. Exits.

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

(e) Windows shall provide a secondary means of escape. Windows shall not be less than 20 inches in width and 24 inches in height, unless the facility is protected throughout by an approved, operational automatic sprinkler system. [~~:~~]

[~~(1) the sleeping room has a door leading directly to the outside of the building; or~~]

[~~(2) the facility is protected throughout by an approved automatic sprinkler system.~~]

(f)-(i) (No change.)

§148.355. Furniture and Supplies.

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

(e) All clients shall have access to laundry services or properly maintained laundry facilities equivalent to one washer and dryer per 25 clients.

(f) (No change.)

§148.372. Physical Plant Requirements for Children.

(a) All programs that provide children's services or childcare on site shall provide a safe and sanitary environment appropriate for children.

(1) Heating equipment shall be cool enough to touch safely.

(2) Heavy furniture and equipment shall be securely installed to prevent tipping or collapsing.

(3) Electrical outlets accessible to children shall have child-proof covers or safety devices.

(4) Air conditioners, fans, and heating units shall be mounted out of children's reach or have safety guards.

(5) Grounds shall be kept free of standing water and sharp objects.

(6) Tap water shall be no hotter than 110 degrees Fahrenheit.

(7) Items potentially dangerous for children shall be stored safely.

(8) Areas that are more than two feet above ground level (such as stairs, porches, and platforms) shall have railings low enough for children to reach.

(9) Tanks, ditches, sewer pipes, dangerous machinery, and other hazards shall be fenced.

(10) Outdoor play areas shall be enclosed by a fence at least four feet high if:

(A) the play area is located close to a road, pool, deep ditch, or other hazard; or

(B) there are more than six children in the group.

(11) Outdoor play equipment shall be in a safe location and securely anchored (unless portable by design).

(12) Buildings, furniture, and equipment shall not have openings or angles that could trap or injure a child's head.

(13) Swing seats shall be durable, lightweight, and relatively pliable.

(b) Residential programs shall meet the following requirements:

(1) Rooms and buildings shall have at least 30 usable square feet of indoor activity space per child when occupied by children.

(2) Bedrooms shall have at least 40 usable square feet per child. This applies whether the child is sleeping with the parent or with other children.

(3) When infant share the parent's bedroom, the room shall contain at least 30 usable square feet per infant.

(4) Nurseries shall have 35 usable square feet per crib.

(5) The program site shall have adequate outdoor play space with a safe route of access.

§148.373. Physical Plant Requirements for Small Family Living Environments.

(a) A small family living environment is a single apartment unit, house, or similar residence (housing no more than six people) which is available to adult clients participating in an outpatient program as described in §148.237 of this title (relating to Small Family Living Environments).

(b) A facility shall meet all residential physical plant rules in §§148.351-148.359 of this title (relating to Required Inspections, Space Requirements, Exits, Fire Systems, Furniture and Supplies, Lighting, Plumbing, Sanitation, and Ventilation) if:

(1) clients are required to live in the housing as a condition of receiving treatment services, or

(2) more than 25% of the clients in an outpatient program live in the optional housing.

(c) A small family living environment must meet the requirements in §148.341 of this title (relating to General Physical Plant Provisions).

(d) Each unit shall meet applicable state laws and local codes and ordinances.

(e) Buildings shall be inspected and approved annually by the fire marshal as required.

(f) Each unit shall have at least one working, portable A:B:C fire extinguisher for the living area and one B:C fire extinguisher for the kitchen. Fire extinguishers shall be approved by the Underwriter Laboratories or the fire marshal.

(g) Each unit shall have at least one working smoke detector approved by the Underwriter Laboratories or the fire marshal.

(h) Doors shall not require a key for exit from the inside.

(i) Buildings and grounds shall be structurally sound, in good repair, and clean.

(j) The residence shall be maintained in a sanitary condition.

(k) All plumbing, equipment, and appliances shall be maintained in good working condition.

(l) Clients shall be able to keep the temperature between 65 degrees and 85 degrees Fahrenheit.

(m) There shall be at least 40 square feet per client in multiple-occupant bedrooms and at least 80 square feet per client in single-occupant bedrooms.

(n) In multiple-occupant residences, bedrooms shall have doors for privacy.

(o) The residence shall have a bathroom with a sink, a toilet, and a tub or shower with an adequate supply of hot water.

(p) The residence shall have cooking facilities that include a sink with hot water, a stove, and a refrigerator.

(q) Lighting shall be sufficient to meet the needs of clients.

(r) The residence shall be appropriately furnished and have an atmosphere that preserves client dignity and confidentiality.

(s) Each client shall have a separate bed with a solid frame and mattress.

(t) The residence shall have adequate closet and drawer space for each client to store clothes and personal property.

(u) Clients shall have access to private or public laundry facilities.

(v) The facility shall inspect the residence at least quarterly to monitor compliance with these rules and correct identified problems.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903516
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 349-6733

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40 TAC §148.371

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §148.371 concerning Physical Plant. This section contains the requirements for small family living environments. This repeal is proposed because these requirements are being revised. The portion of the requirements that address program services will be moved to that subchapter and the portion that addresses physical plant requirements will be moved to a new section within this subchapter. Both of those actions are concurrently proposed for adoption.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of the proposed repeal.

Ms. Bleier has also determined that for each year of the first five years the repeal is in effect the anticipated public benefit

will be clarity about the purpose of and requirements for small family living environments. There will be no effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on these proposed rules at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

The repeal is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed repeal is the Texas Health and Safety Code, Chapter 464.

§148.371. Small Family Living Environments.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903517
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6733

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Chapter 149. Court Commitments

Subchapter A. Civil Court Commitments

40 TAC §§149.1, 149.11-149.16

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

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§149.1 and 149.11-149.16 concerning Court Commitments. These sections describe the definitions of terms used, authority of the commission regarding court commitments, approval needed by facilities, licensure requirements, staff training requirements, general procedures, and the documentation required for court commitments. The repeals are proposed because these rules are being incorporated into the rules for all licensed facilities.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of the proposed repeals.

Ms. Bleier has also determined that for each year of the first five years the repeals are in effect the anticipated public benefit will be less confusion for court commitment programs. There will be no effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*.

The repeals are proposed under the Texas Health and Safety Code, §461.012(a)(15) and §462 which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for approval of chemical dependency treatment facilities to accept court commitments.

The code affected by the proposed repeals is the Texas Health Safety Code, §461.012(a)(15) and §462.

§149.1. Definitions.

§149.11. Authority.

§149.12. Approval.

§149.13. Licensure.

§149.14. Training.

§149.15. General Procedures.

§149.16. Documentation.

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

Filed with the Office of the Secretary of State, on June 14, 1999.

TRD-9903518
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 25, 1999
For further information, please call: (512) 349-6733

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 5. Community Services Program

The Texas Department of Housing and Community Affairs (TDHCA) adopts amendments to the following Sections of Chapter 5 issued under the Texas Government Code, Chapter 2306, concerning the Community Services Block Grant Program (CSBG) and the Emergency Nutrition Temporary Emergency Relief Program (ENTERP): §§5.1; 5.101-5.106; 5.108-5.114; 5.116-5.121 are adopted without changes to the proposed text published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2555). The amendments are adopted to change the references to the State Agency currently administering the program and to establish the standards and procedures by which TDHCA will administer CSBG and ENTERP as well as comply with Section 167, Article IX, of the General Appropriations Act.

No comments were received regarding the adoption of the amendments.

Subchapter A. Community Services Block Grant

10 TAC §5.1

The amendment is adopted under Texas Government Code, Chapter 2306, and Section 167, Article IX, of the General Appropriations Act.

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

Filed with the Office of the Secretary of State on June 14, 1999.

TRD-9903546
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 4, 1999
Proposal publication date: April 2, 1999
For further information, please call: (512) 475–3726

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Subchapter B. Emergency Nutrition Temporary Emergency Relief Program

10 TAC §§5.101–5.106, 5.108–5.114, 5.116–5.121

The amendments are adopted under Texas Government Code, Chapter 2306, and Section 167, Article IX, of the General Appropriations Act.

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

Filed with the Office of the Secretary of State on June 14, 1999.

TRD-9903547
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 4, 1999
Proposal publication date: April 2, 1999
For further information, please call: (512) 475–3726

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10 TAC §5.115

The Texas Department of Housing and Community Affairs (TDHCA) adopts the repeal of §5.115, without changes, as published in the April 2, 1999 issue of the *Texas Register* (24 TexReg 2558) concerning Audit Resolution. The section is repealed in order to remove unnecessary rules, which apply to a predecessor agency as well as to comply with Section 167, Article IX, of the General Appropriations Act.

No comments have been received regarding the adoption of the repeal.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306; and Section 167, Article IX, of the General Appropriations Act.

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

Filed with the Office of the Secretary of State on June 14, 1999.

TRD-9903545
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 4, 1999
Proposal publication date: April 2, 1999
For further information, please call: (512) 475–3726

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TITLE 13. CULTURAL RESOURCES

Part VI. Texas Emancipation Juneteenth Cultural and Historical Commission

Chapter 81. General Rules for Operation of the Commission

13 TAC §§81.1, 81.3, 81.5, 81.7

The Texas Emancipation Juneteenth Cultural and Historical Commission adopts new §§81.1, 81.3, 81.5, and 81.7, concerning the basic operational procedures of the commission. The proposed sections were published in the December 11, 1998, issue of the *Texas Register* (23 TexReg 12571). These sections are adopted without changes, therefore, the text will not be republished.

JUSTIFICATION

These sections are adopted to clearly provide for the day-to-day operation of the commission. The enabling statue provides only general authority for the commission, and it is necessary to adopt these sections to authorize the chairman to handle routine matters between commission meetings and to appoint committees to perform elements of the work of the commission, to allow the commission to authorize expenditures and enter into contracts, and to provide procedures for establishing the advisory committee authorized by the legislature.

Section 81.1 provides definitions of the terms "Chairman," "Commission," and "Juneteenth." Section 81.3 provides for the selection of a chairman of the Commission at the first meeting of each state fiscal year by election from among the members. The chairman may select a vice chairman to serve in the absence of the chairman and may appoint committees of the Commission. The rule assigns certain duties to the chairman of the Commission, including the authority to call meetings and set their agenda, approve expenditures and hire staff. The Commission may delegate duties to staff by resolution, except the authority to approve rules. The Commission may contract as necessary to carry out its duties. Section 81.5 provides for the budget and finances of the Commission. The Commission must annually approve a budget for the Commission and biennially approve a legislative appropriation request. The Commission may accept donation of money or real or personal property for the purposes of the Commission. Section 81.7 provides that the Commission may select an advisory committee to advise the Commission on matters pertaining to the construction, dedication, and maintenance of a monument for the commemoration of Juneteenth. The advisory committee will be selected through nominations from the members of the Commission and a final vote by the Commission. Members of the advisory committee may be reimbursed on the same basis as member of the Commission.

No comments were received regarding adoption of the new rules.

The new sections are adopted under the Texas Government Code, Title 4, Subtitle D, Chapter 448. The Texas Emancipation Juneteenth Cultural and Historical Commission was established by the Legislature in 1997 through the adoption of House Bill 1216, and is effective September 1, 1997. Section 448.031, Texas Government Code, provides the Commission with the authority to promulgate rules to effect the purposes of this chapter.

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

Filed with the Office of the Secretary of State on June 10, 1999.

TRD-9903433
Representative Al Edwards
Chairman
Texas Emancipation Juneteenth Cultural and Historical Commission
Effective date: June 30, 1999
Proposal publication date: December 11, 1998
For further information, please call: (512) 463–0518

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter Q. Post-Interconnection Agreement Dispute Resolution

16 TAC §§22.322, 22.323, 22.326

The Public Utility Commission of Texas (commission) adopts amendments to §22.322 relating to Definitions and §22.323 relating to Filing of Agreement with no changes to the proposed text as published in the March 5, 1999 *Texas Register* (24 TexReg 1519), and adopts amendments to §22.326 relating to Formal Dispute Resolution Proceeding with changes to the proposed text as published in the March 5, 1999 *Texas Register* (24 TexReg 1519). Project Number 17709 is assigned to this proceeding.

The amendment to §22.322 removes the reference to the definitions in Procedural Rules, Subchapter P, §22.302 as these definitions have been moved to §22.2 of this title (relating to Definitions). Section 22.302 has been repealed. The definitions in Procedural Rules, Subchapter Q, remain in this subchapter as subchapter specific definitions. The definitions have also been numbered to comply with the requirements of the *Texas Register* as adopted in 1998. The amendment to §22.323 clarifies filing procedures for substitution pages to an interconnection agreement. The amendment to §22.326(k) rearranges sentences for clarity, extends the time for the arbitrator to file the written decision from 15 days after the close of the hearing to 15 days after the filing of post-hearing briefs, and requires the arbitrator to notify parties when the arbitrator's decision is final. The extension of time is necessary to allow for sufficient review of the issues.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission had invited specific comments regarding the Section 167 requirement, as to whether the reason for adopting these rules continues to exist, in the

comments on the proposed amendments. MCI Worldcom, Inc. commented that the rules in Subchapter Q are critical to the development of a competitive telecommunications marketplace in Texas. The commission finds that the reason for adopting these sections continues to exist.

The commission received comments on the proposed amendments from MCI Worldcom, Inc. (MCIW).

MCIW opposes the proposed change to §22.326(g) that extends the time for the hearing to commence to address the complaint from 50 days to 75 days. MCIW states that this change, coupled with the proposed change in §22.326(k) which extends the time for the arbitrator's written decision from 15 days after the close of the hearing to 15 days after the filing of post-hearing briefs, lengthens the process from 65 days to over 100 days. MCIW advises that competitive local exchange carriers (CLECs) cannot wait this long for a decision on an issue that is critical to their operations. MCIW supports the change to subsection (k), acknowledging that the practical reality of issuing a decision 15 days after the conclusion of the hearing is impossible. MCIW recommends shortening the timeframe for the setting of the hearing to 45 days, stating that although this recommended change would lengthen the timeframe to 75 days, this change reflects the current practical application of the rule. MCIW asserts that the availability of the expedited ruling and/or interim ruling processes to provide CLECs avenues for prompt resolution of issues of great importance to CLEC operations misses the mark, as the form of dispute resolution ultimately available to CLECs is not within their control.

The commission recognizes the need to complete proceedings under §22.326 on a timely basis. However, the commission's experience has been that competitors and incumbents alike request extensions, usually agreed to by the parties. Therefore, the commission does not believe it is practical to reduce the time to commence the hearing to 45 days as suggested by MCIW. The commission modifies the proposed amendment to subsection (g) to retain the 50-day timeframe established in the original rule.

The commission makes a correction to proposed §22.326(k)(2). The proposed paragraph contained a reference to Subchapter P, §22.305(r)(4)-(6). There are no paragraphs (4)-(6) in subsection (r). The correct reference is to §22.305(s)(4)-(6).

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and the federal Telecommunications Act of 1996 which authorizes the commission to engage in negotiation, arbitration, approval, and enforcement of agreements for interconnection, services or network elements.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.326. Formal Dispute Resolution Proceeding.

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

(g) Notice and hearing. Unless §22.327 or §22.328 of this title apply, the arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than 50 days after filing of the complaint. The arbitrator shall notify the parties, not less than 15 days before the hearing, of the date, time, and location of the hearing. The hearing shall be transcribed by a court reporter designated by the arbitrator.

(h)-(j) (No change.)

(k) Decision.

(1) The written decision of the arbitrator shall be filed with the commission within 15 days after the filing of post-hearing briefs and shall be mailed by first-class mail to all parties of record in the dispute resolution proceeding. On the same day that the decision is issued, the arbitrator shall notify the parties by facsimile that the decision has been issued. To the extent that the decision involves 9-1-1 issues, the arbitrator shall also notify the Advisory Commission on State Emergency Communications (ACSEC) by facsimile on the same day.

(2) The decision of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The arbitrator may provide for later implementation of specific provisions as addressed in the arbitrator's decision. The decision may also contain the items addressed in Subchapter P, §22.305(s)(4)-(6) to the extent deemed necessary by the arbitrator to explain or support the decision.

(3) Within three business days from the date the arbitrator's decision is issued, any commissioner may place the arbitrator's decision on the agenda for the next available open meeting. If the decision is scheduled for open meeting, then the decision shall be stayed until the commission affirms or modifies the decision.

(4) If no commissioner places the arbitrator's decision on the open meeting agenda within three business days, the arbitrator's decision is final and effective on the expiration of that third business day. The arbitrator shall notify the parties when the arbitrator's decision is deemed final under this paragraph.

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

Filed with the Office of the Secretary of State on June 10, 1999.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: March 5, 1999
For further information, please call: (512) 936-7308

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Subchapter R. Approval of Amendments to Existing Interconnection Agreements and Agreements Adopting Terms and Conditions Pursuant to FTA96 §252(i)

16 TAC §22.341

The Public Utility Commission of Texas (commission) adopts an amendment to §22.341 relating to Approval of Amendments to Existing Interconnection Agreements with changes to the proposed text as published in the March 26, 1999 *Texas Register* (24 TexReg 2122). The amendment delegates to staff the authority to approve uncontested amendments to interconnection agreements through the administrative review

process in order to expedite the approval of these amendment applications. This amendment is adopted under Project Number 20531.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission had invited specific comments regarding the Section 167 requirement, as to whether the reason for adopting this rule continues to exist, in the comments on the proposed amendment. No interested persons commented on the Section 167 requirement. The commission finds that the reason for adopting these sections continues to exist.

The commission received comments on the proposed amendment from the Office of Public Utility Counsel (OPC) and Southwestern Bell Telephone Company (SWBT).

OPC is concerned that the proposed amendments to permit administrative approval of uncontested amendments to interconnection agreements through an administrative review process may deny OPC the opportunity to fully protect the interests of its clients. OPC states that the proposed amendment creates a bifurcated process by which the presiding officer alone may review and approve an application without input from interested parties. OPC also requests that the commission clarify that the administrative review process contemplated by this amendment applies only to "uncontested" amendments to interconnection agreements.

All interested persons will have the opportunity to comment on the proposed interconnection agreement amendment, whether it is approved through the administrative review process or the formal review process. Notices of all applications for an amendment to an existing interconnection agreement are published in the *Texas Register* for comment. Also, notice of all administratively approved applications is filed in the commission's Central Records on the first and fifteenth day of each month. Motions for reconsideration of the administratively approved application may be filed within ten days of the notice filed on the first and fifteenth days. The commission strongly encourages interested persons to file comments prior to administrative approval, so that the presiding officer will have the opportunity to consider the comments in making a decision. The commission modifies subsection (c)(1) to clarify that comments may be filed by interested persons and that only amendments to interconnection agreements that are in compliance with the federal Telecommunications Act of 1996 and uncontested by the parties may be administratively approved.

SWBT submits that §22.341(h)(2) is not clear regarding who has standing to file a motion for reconsideration seeking review of an amendment that is administratively approved or denied and submits that only parties to the amendment may file a motion for reconsideration. SWBT recommends that subsection (h)(2) be modified to state that "Parties to the amendment may file" motions for reconsideration.

The opportunity to file a motion for reconsideration of administrative approval is intended to parallel the public comment process contained in the formal approval process and includes "interested persons" as well as parties. Interested persons who file a motion for reconsideration are not entitled to participate as parties, but may bring to the commission's attention any specific allegations that the agreement, or some portion thereof, is in violation or not consistent with the federal Telecommunications Act of 1996. The commission has added the language "motions for reconsideration filed by non-parties will be considered as comments filed by an interested person" to clarify the process.

SWBT submits that the interim approval provision in §22.341(h)(3) should be removed because (1) the proposed language conflicts with §22.341(d) which permits interim approval only when the parties have agreed to interim approval; (2) the presiding officer will have already denied the application for approval of the amendment (thus necessitating the motion for reconsideration), making interim approval inappropriate; and (3), as drafted, the provision is not clear as to the effective date of such interim approval.

The interim approval in subsection (d) is intended to permit the parties to proceed with the terms of the application for an amended interconnection agreement during the review process. Subsection (h)(3) is intended to clarify that the agreement is approved on an interim basis pending any motions for reconsideration of an application approved under the administrative review process. The interim approval in subsection (h)(3) is intended to allow the parties, if they so choose, to proceed with the terms of the agreement pending commission decision on any motions for reconsideration. The commission adds language to clarify that the effective date of the interim approval is the date the presiding officer issues the notice of approval in an administratively approved amendment to an interconnection agreement.

Proposed subsection (i) (existing §22.341(g)) requires the parties, upon approval of the amendments, to file a complete amended interconnection agreement with the commission's filing clerk, if one has not already been filed, within ten days of the commission's decision. SWBT states that in practice, the commission has ordered parties to file 13 copies of anything relating to interconnection agreements. SWBT submits that in this case, the only purpose for filing the complete amended agreement would be to ensure that a conformed agreement is on file and not for the commission to review the entire agreement again in toto for re-approval. Therefore 13 additional copies of the complete agreement is not necessary.

The commission agrees with SWBT. Subsection (i) has been modified to require three copies of the complete agreement, one file copy, one unbound copy for scanning, and one copy for the Office of Policy Development. The commission has also added language requiring that the complete agreement be clearly marked with the control number assigned to the proceeding and the language "Complete amended interconnection agreement as approved on (insert date)" to assist Central Records in determining that only three copies of this document are required.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and the federal Telecommunications Act of 1996 which authorizes the commission to engage in negotiations, arbitration, approval, and enforcement of agreements for interconnection, services or network elements.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.341. Approval of Amendments to Existing Interconnection Agreements.

(a)-(b) (No change.)

(c) Proceeding.

(1) Administrative review and approval.

(A) To be considered for administrative review and approval an application shall:

(i) be uncontested by the parties; and

(ii) meet the requirements of FTA96 §252.

(B) The presiding officer may determine that a formal review of the application is appropriate pursuant to paragraph (2) of this subsection.

(C) At a minimum, the commission will allow interested persons, the Office of Regulatory Affairs, and the Office of Policy Development to file comments pursuant to subsection (e) of this section.

(2) Formal review. The presiding officer may determine that a formal review is necessary to determine if the negotiated agreement meets the requirements of the FTA96 §252. At a minimum, the commission will allow interested persons and the Office of Regulatory Affairs to file written comments, provided the comments are filed within 25 days of the filing of the application.

(d) (No change.)

(e) Comments. An interested person or the Office of Regulatory Affairs may file comments on the amended agreement by filing 13 copies of the comments with the commission's filing clerk and serving a copy of the comments on each party to the agreement within 20 days of the filing of the application. The comments shall include the following information:

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

(f) (No change.)

(g) Final Decision.

(1) Administrative approval. The commission delegates its authority to the presiding officer to administratively approve or deny any interconnection agreement amendments subject to the administrative review process in subsection (c)(1) of this section. The notice of approval or denial shall be issued within 35 days of the filing of the application. If a notice of denial is filed, the notice of denial shall include written findings indicating any deficiencies in the agreement.

(2) Formal approval. When an amendment to an interconnection agreement is subject to the formal review process in subsection (c)(2) of this section, the commission will issue its final decision on the amendment within 90 days following the filing of the application. The commission's final decision may reject the amendment as submitted, approve the amendment as submitted, or approve the amendment with modifications necessary to establish or enforce compliance with other requirements of state law. If the commission rejects the amendment, the final decision will include written findings indicating any deficiencies in the amendment.

(h) Rehearing regarding administratively approved amendments to existing interconnection agreements.

(1) On the first and fifteenth day of each month the presiding officer shall file a monthly status report, in a project created for that purpose, listing all of the amendments to existing interconnection agreements administratively approved since the previous report.

(2) Motions for reconsideration seeking commission review of any amendment in a status report shall be filed within ten days of the filing of that report. All motions for reconsideration shall state any claimed error with specificity. Motions for reconsideration filed by non-parties will be considered as comments filed by an interested person.

(3) Upon the filing of a motion for reconsideration, the Office of Policy Development shall send separate ballots to each commissioner to determine whether the docket should be placed on an open meeting agenda. If a majority of commissioners ballot to reconsider the motion within five days of its filing, the amendment shall be considered at the next open meeting for which notice of the docket may properly be made. The administratively approved agreement shall be considered approved on an interim basis from the date the presiding officer filed the notice of approval until the time to file motions for reconsideration has expired, or if a motion for reconsideration is filed, until considered at open meeting.

(i) Filing of agreement. If the commission approves the amendments to the agreement, the parties to the agreement shall file three copies, one unbound, of the complete amended interconnection agreement with the commission's filing clerk, if one has not already been filed, within ten days of the commission's decision. The copies shall be clearly marked with the control number assigned to the proceeding and the language "Complete amended interconnection agreement as approved on (insert date)."

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

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 115. Extension of Duties of Auxiliary Personnel Dental Hygiene

22 TAC §115.20

The State Board of Dental Examiners adopts an amendment to §115.20 with changes to the proposed text as published in the April 16, 1999 issue of the *Texas Register* (24 TexReg 3016).

The proposed amendment to the rule are intended to more closely track the provisions of Tex. Rev. Civ. Stat. Anno, article 4551e, Section 4A (Vernon Supp., 1999). Further, as proposed, subsection (d) of the rule was intended to establish a four year life for the Dental Hygiene Advisory Committee (DHAC) under the provisions of Texas Government Code §2110 (Vernon Supp., 1999). The change from the published language is the deletion of subsection (d).

The amended §115.20 as originally published in the *Texas Register* provided the purpose of DHAC , that the State Board of Dental Examiners (SBDE) will evaluate the committee annually, that the members should select a chair who is to report to the board on committee activities, and provided for continued existence of the committee until September 1, 2003.

Subsections (a) (b) and (c) are adopted as proposed. Subsection (d) is deleted. An amendment to the Dental Practice Act, Tex. Rev. Civ. Stat. Anno, Article 4543 et seq. (Vernon Supp., 1999) set forth in Senate Bill 964, which is currently before the Governor, provides that DHAC is subject to Texas Government Code §325 (Vernon Supp., 1999), the Sunset Act. It also provides that DHAC is abolished on September 1, 2005 unless it is continued in existence under the Sunset Act.

Thus, the rule as proposed conflicts with the amendment. Since the specifics of DHAC's duration and of how it may continue are in the Dental Practice Act, subsection (d) is not appropriately included in the rule.

There was one comment letter from the Texas Dental Hygienists' Association (TDHA) requesting three changes to the published rule.

The first request was that subsection (d) be amended to provide that DHAC should continue in existence until the SBDE is abolished. Since the Legislature has spoken on this issue, the Board cannot adopt rules contrary to the Dental Practice Act. The continuation of DHAC is controlled by the Sunset Act. For these reasons, the first suggestion of TDHA is not approved.

The second request was that a new subsection (e) be provided. That section would require the SBDE to provide to Committee members copies of all communications or information coming to the Board that relate to dental hygiene. Further, the Board would be required to provide each Committee member with an agenda for all Board and Board Committee meetings. Lastly, it would require that copies of information relating to dental hygiene that is made available to Board members be provided to each Committee member.

The amount of information or communications relating to dental hygiene that comes to the Board is voluminous. As requested the rule would require Board staff to review all magazines and publications concerning dentistry to be reviewed for content. Further, it would require that Committee members be provided with copies of investigative files, which are confidential pursuant to Article 4550, §2. The Board makes significant effort to ensure that DHAC members have copies of information concerning dental hygiene matters that may or will come before this Board.

The Board follows a policy of providing the DHAC chair with copies of agendas for all Board and Board Committee meetings, along with any information provided to Board members. The TDHA is requesting establishment of a procedure that is already in place, with one exception. Currently, only the DHAC chair is provided with this information, while the request would result in all members receiving a copy directly from the Board. It is the Board's intent that Committee members have copies of the information and it looks to the chair to see that copies are provided to them. Thus the addition of subsection (e) would accomplish no purpose.

The third request was for a new subsection (f) which would make all DHAC members ex officio members of all Board committees. All committee meetings are posted and are open meetings that may be attended by the public. Even though the chair can refuse to allow participation in discussion by the public, as a practical matter comment is always allowed if the commenter has an interest in the subject under discussion. Further, since the committees are Board committees, all of which are made up of Board members, appointment of ex officio members who are not Board members is inappropriate; such power for DHAC is not provided for by Article 4551e at §4A. Further, as members of the committee, albeit ex officio, all DHAC members would be expected to attend all Board committee meetings. Travel costs for six additional persons would devastate the agency's travel budget at a time when the Legislature has imposed a travel cap for each fiscal year for the agency. In fact from the date this rule is adopted until August 31, 2001, there are no funds for such travel costs. Board committee recommendations are reviewed by the Board in open meeting where the subject matter to be discussed is published, and the DHAC chair can be allowed input during the Board discussions. For the reasons set forth, the Board declines to add subsection (f).

The amended rule is adopted under Texas Government Code 2001.021 et seq.; Texas Civil Statutes and article 4551d which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules as may be necessary to ensure compliance with laws relating to the practice of dentistry, and article 4551e, §4A which establishes the Dental Hygiene Advisory Committee.

§115.20. Dental Hygiene Advisory Committee–Purpose and Composition.

(a) The Dental Hygiene Advisory Committee is established pursuant to Texas Civil Statutes, Article 4551e, §4A, for the purpose of advising the Board on matters relating to dental hygiene.

(b) The Board shall annually evaluate the Committee's work, its usefulness, and the costs related to the Committee's work to include agency staff time in support of the Committee's activities. Reimbursement of costs shall be determined as set out in the General Appropriations Act and under Article 4551e, §4A.

(c) The Committee shall elect from among its members a presiding officer who shall serve for one year and who shall report to the Board on Committee activities as may be required, but no less often than annually.

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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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Subchapter A. General Provisions Relating to the Requirement of Licensure

22 TAC §§535.1-535.3

The Texas Real Estate Commission (TREC) adopts an amendment to §535.1, concerning when a real estate license is required, with changes to the proposed text as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3287). Amendments to §535.2, concerning the broker's responsibility, and §535.3, concerning compensation accepted by a salesperson, are adopted without changes to the proposed text and will not be republished.

The amendment to §535.1 clarifies that Texas Civil Statutes, Article 6573a, (the Act) applies to those persons acting as real estate brokers or salespersons within the state. On final adoption, the commission determined that Texas consumers should be protected when engaging in real estate transactions from this state by means of the Internet, telephone, mail, e-mail or other electronic medium and revised §535.1 to reflect that position. As modified, the section provides that a person conducting brokerage business from another state by means of the specified media would be considered acting within Texas and would be subject to the Act. Several subsections also were deleted as unnecessary since the issues they concern are either addressed elsewhere in TREC's rules or in the Act. The section also was revised to combine a number of subsections which describe activities for which a license is not required, such as the performance of secretarial or clerical functions. A general definition of the terms "property" and "real property" was added to clarify the meaning of the terms used in TREC's rules.

The amendment to §535.2 eliminated unnecessary provisions addressing matters not within the jurisdiction of the commission, combined other provisions relating to the responsibility of the broker and restated other provisions in clearer language. The amendment to §535.3 broadened the scope of that section to address payment of compensation by salespersons as well as compensation paid to salespersons.

These actions are necessary to ensure the protection of Texas consumers when engaging in real estate transactions, whether conducted entirely in Texas, or conducted by persons acting as real estate brokers from other states. By applying the Act to persons conducting brokerage business from another state with a Texas consumer, TREC is acting to ensure that the real estate needs of Texas consumers will be served by persons who have met the standards for real estate brokers required under Texas law. These actions also are necessary to continue the process of keeping TREC's rules current and concise.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§535.1. License Required.

(a) Texas Civil Statutes, Article 6573a (the Act) applies to persons acting as real estate brokers or salespersons within this state, regardless of the location of the real estate involved or the residence of the person's customers or clients. For the purposes of the Act, conducting brokerage business from another state by mail, telephone, the Internet, e-mail or other electronic medium is considered acting within this state.

(b) Unless otherwise exempted by the Act, a person must be licensed as a real estate broker or salesperson to show a broker's listings, solicit listings of real property perform any act defined as that of a real estate broker by the Act. An unlicensed person may be hired by a broker to act as a host or hostess at a property being offered for sale by the broker, provided the unlicensed person engages in no activity for which a license is required.

(c) The employees, agents or associates of a licensed broker, including a corporation or limited liability company licensed as a broker, must be licensed as real estate brokers or salespersons if they direct or supervise other persons in the performance of acts for which a license is required. A license is not required for the performance of secretarial, clerical, or administrative tasks, such as training personnel, performing duties generally associated with office administration and personnel matters. Unlicensed employees, agents, or associates may not solicit business for the broker or hold themselves out as authorized to act as real estate brokers or salespersons.

(d) As used in this chapter, the terms "property" and "real property" have the same meaning as "real estate" as that term is defined in the Act.

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

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TRD-9903454
Mark A. Moseley
General Counsel
Texas Real Estate Commission
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Proposal publication date: April 30, 1999
For further information, please call: (512) 465-3900

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22 TAC §535.4

The Texas Real Estate Commission (TREC) adopts the repeal of §535.4, concerning compensation paid by a salesperson, without changes to the proposed text as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3288).

As part of TREC's review of Chapter 535 of the Texas Administrative Code, the provisions in §535.4 have been moved to §535.3 in connection with an amendment to that section.

No comments were received regarding the proposal.

The repeal is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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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Mark A. Moseley
General Counsel
Texas Real Estate Commission

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For further information, please call: (512) 465-3900

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Subchapter B. Definitions

22 TAC §§535.11, 535.14, 535.18

The Texas Real Estate Commission (TREC) adopts the repeal of §535.11, concerning the definition of real estate, §535.14, concerning offers to dispose of real estate, and §535.18, concerning auctions, without changes to the proposed text as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3289).

Adoption of the repeals is necessary to shorten TREC's rules by eliminating unnecessary restatements of the agency's enabling legislation, Texas Civil Statutes, Article 6573a or sections which duplicate the content of other sections.

No comments were received regarding the proposal.

The repeals are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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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Mark A. Moseley
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22 TAC §§535.12, 535.13, 535.15-535.17, 535.21

The Texas Real Estate Commission (TREC) adopts an amendment to §535.17, concerning appraisals, with changes to proposed text as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3289). The proposed amendments to §535.12, concerning general definitions, §535.13, concerning dispositions of real estate, §535.15, concerning negotiations, §535.16, concerning listings and §535.21, concerning unimproved lot sales and listing publications are adopted without changes and will not be republished.

The amendment to §535.12 deletes subsections which are unnecessary because they merely restate the general definition of "real estate broker" contained in Texas Civil Statutes, Article 6573a, (the Act) or address issues which may be resolved by referring directly to the Act. The remaining language was revised to make it easier to read.

The amendment to §535.13 combines several subsections to clarify the activities for which a person is required to be licensed and updates the section to make it consistent with recent Attorney General Letter Opinion Number 98-119, which permits unlicensed employees of corporations and other business entities to act for their employers. The amendment also clarifies that a entity may be considered to be an owner if the entity either holds record title to the property or has an equitable title or right acquired by contract with the record title holder and that a corporation or limited liability company is required to be licensed as a real estate broker if it or its employee receives or expects to receive a valuable consideration from the record title holder for negotiating a sale or other disposition of the property.

The amendment to §535.15 deletes provisions concerning activities which may be performed by a broker's employees. The deleted provisions have been combined and moved to §535.1 in connection with an amendment to that section.

The amendment to §535.16 rewrites the section for clarity and deletes unnecessary provisions which merely restate the law. A definition of the term "net listing" was added to make the section easier to understand.

The amendment to §535.17 rewrites and shortens the section for clarity and deletes subsections which merely restate the law or which address issues which may be resolved by referring to the Act.

The Texas Association of Realtors commented that the proposed amendment to §535.17 made a substantive change that may not have been intended, in that deletion of the phrase "for a separate fee" would effectively extend the disclosure requirements imposed by the section to every opinion of value and market analysis prepared by a broker, when the section had been originally intended to address only an opinion of value or analysis for which a separate fee was being charged.

The commission agreed and modified the language on final adoption to require the disclosure only when a separate fee is being charged.

The amendment to §535.21 rewrites the section for clarity and to eliminate provisions which are repetitive.

Adoption of the amendments is necessary to complete the process of reviewing TREC's rules and making them current and usable by the public.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§535.17. Appraisals.

(a) A salesperson may make, sign, and present real estate appraisals for the salesperson's sponsoring broker, but the salesperson must submit appraisals in the broker's name and the broker is responsible for the appraisals.

(b) Texas Civil Statutes, Article 6573a (the Act) does not apply to appraisals performed by the employees of a financial institution or investment firm in connection with a contemplated loan or investment by their employers.

(c) Except as provided by this section, appraisals of real property performed in this state by Texas real estate licensees must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect at the time the appraisal is performed. If a real estate licensee, for a separate fee, provides an opinion of value or comparative market analysis which does not conform with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, the licensee shall also provide the person for whom the opinion or analysis is prepared with a written statement containing the following language: "THIS IS AN

OPINION OF VALUE OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."

(d) The statement required by subsection (c) of this section must be made part of any written opinion or analysis report and must be reproduced verbatim.

(e) The exception allowed by subsection (c) of this section does not apply to a transaction in which the Resolution Trust Corporation or a federal financial institutions regulatory agency has required compliance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

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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Mark A. Moseley
General Counsel
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Subchapter C. Exemptions to Requirement of Licensure

22 TAC §§535.31-535.35

The Texas Real Estate Commission (TREC) adopts amendments to §535.31, concerning exempt attorneys at law, §535.32, concerning exempt attorneys in fact, §535.33, concerning exempt public officials, §535.34, concerning exempt salespersons employed by an owner, and §535.35, concerning exempt employees renting or leasing their employer's real estate, without changes to the proposed text as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3292). The text will not be republished. Adoption of the amendments is necessary to complete the review of TREC's rules, reducing their volume wherever possible and making them easier for the public to use.

The amendment to §535.31 restates the exemption for licensed attorneys and combines several subsections to make the section easier to read. Provisions relating to the attorney's client and non-client relationships, State Bar of Texas rules and membership in trade associations have been deleted as unnecessary. The amendment to §535.32 makes the section concerning the exemption for attorneys-in-fact easier to read. The amendment to §535.33 restates the exemption for public officials and deletes subsections which merely provide examples of public officials exempt from the requirement of holding a license or registration issued by TREC. The amendment to §535.34 deletes unnecessary provisions which merely provide examples of relationships between a builder and other persons who are not entitled to claim an exemption from licensing requirements. The amendment to §535.35 makes nonsubstantive changes and deletes a subsection that merely repeats the statutory exemption for employees renting or leasing their employer's real estate.

No comments were received regarding the proposal.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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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Mark A. Moseley
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465–3900

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Subchapter D. The Commission

22 TAC §535.41, §535.42

The Texas Real Estate Commission (TREC) adopts amendments to §535.41, concerning procedures for meetings of the members of the commission, and §535.42, concerning TREC's jurisdiction and authority, without changes to the proposed text as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3293). The text will not be republished. Adoption of the amendments is necessary to complete the review of TREC's rules, reducing their volume wherever possible and making them easier for the public to use.

The amendment to §535.41 makes the section easier to read and consistent in style with TREC's other rules. The amendment to §535.42 deletes unnecessary language, combines provisions and clarifies the authority of the staff administrative law judge to order issuance of a probationary license.

No comments were received regarding the proposal.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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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Mark A. Moseley
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Subchapter E. Requirements for Licensure

22 TAC §§535.51–535.53

The Texas Real Estate Commission (TREC) adopts amendments to §535.51, concerning general requirements for a real estate license, §535.52, concerning individual applicants, and §535.53, concerning applications by corporations and limited liability companies, without changes to the proposed text as published in the April 30, 1999, issue of the *Texas Register* (24TexReg 3294). The text will not be republished. Adoption of the amendments is necessary to complete the review of TREC's rules, reducing their volume wherever possible and making them easier for the public to use.

The amendment to §535.51 clarifies that applicants must file the application for a license on the form adopted by the commission for that purpose and that applications will be returned to the applicant if requisite education or experience requirements have not been satisfied. The amendment to §535.52 generally restates TREC's statutory authority to disapprove an application at any time prior to the issuance of a license if the applicant fails to satisfy TREC as to the person's honesty, trustworthiness and integrity. The amendment to §535.53 combines and shortens the provisions relating to the licensing of corporations and limited liability companies. A provision relating to the authority of an unlicensed corporate officer was deleted in §535.53, because that subject is being addressed in an amendment to §535.13.

No comments were received regarding the proposal.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Parks and Wildlife Department

Chapter 53. Finance

Subchapter A. License Fees and Boat and Motor Fees

31 TAC §53.3

The Texas Parks and Wildlife Commission adopts an amendment to §53.3, concerning Other Recreational Hunting and Fishing Licenses, Stamps, and Tags, without changes to the proposed text as published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1748).

The amendment is necessary for the department to recover the cost of administering and enforcing the new bonus white-tailed deer tag, and to generate revenue to provide greater public hunting opportunity.

The amendment creates a new subsection (h) to establish a fee for the purchase of a bonus white-tailed deer tag.

The department received 11 comments regarding adoption of the proposed rule. The commenters stated that the fee was too low. The department disagrees with the comments and responds that the fee is intended to be affordable. No changes were made as a result of the comments.

The amendment is adopted under the provisions of Parks and Wildlife Code, Chapter 42, §42.010, which authorizes the commission to establish fees for tags.

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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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389–4775

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Chapter 65. Wildlife

The Texas Parks and Wildlife Commission adopts amendments to §§65.11, 65.26, 65.28, 65.42, 65.46, and 65.72, concerning the Statewide Hunting and Fishing Proclamation. Sections 65.11, 65.42, and 65.72 are adopted with changes to the proposed rules as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1574). Sections 65.26, 65.28, and 65.46 are adopted without changes and will not be republished.

The change to §65.11, concerning Lawful Means, removes a proposed prohibition on devices built into or attached to a bow that would allow it to be locked at full or partial draw. The change to §65.42, concerning Deer, removes a proposal that would have opened the season for white-tailed deer in Blanco, Gillespie, Llano, and Mason counties on the Saturday closest to November 15; removes proposals that would have restricted the harvest of buck deer in Washington, Fayette, Lavaca, Austin, and Colorado counties; alters a roadway boundary in Victoria County to conform with actions of the Texas Department of Transportation; and establishes a permit requirement for the hunting of antlerless deer in Grayson County. The change to §76.72, concerning Fish, establishes an effective date of May 20, 1999, for bag and possession limits for red snapper; adds three species to the list of lawful baitfish in 17 West Texas counties and clarifies that all other baitfish may not be used or possessed while fishing; and eliminates a proposed zero bag limit on red snapper for the captain and crew of for-hire vessels.

The rules in general are justified under the provisions of Parks and Wildlife Code, Chapter 61, which requires the department to provide open seasons for the hunting of game animals and game birds when its investigations and findings of fact reveal that open seasons may be safely provided, and further, requires the commission to specify the species, quantity, age or size, and

sex of wildlife resources that may be taken or possessed; the means and methods by which wildlife resources may be taken, and the geographical locations where wildlife resources may be taken.

In particular, §65.11 is justified because the department has expanded the former late antlerless-only season to include spike bucks as well as antlerless deer. Section 65.26 is justified because the creation of a bonus white-tailed deer tag for use on managed lands necessitates the inclusion of language to conform the section's application to holders of a bonus tag, and because the extended season available to MLD properties in Hill Country counties is a general season and therefore the stamp requirement for muzzleloading weapons does not apply. Section 65.28 is justified because the creation of a bonus white-tailed deer tag for use on managed lands necessitates the inclusion of language to conform the section's application to holders of a bonus tag. Section 65.42 is justified because: biological and demographic data indicate that antlerless deer populations in Archer, Baylor, Clay, Montague, and Wise counties may be hunted for the entire season without risk of negative impacts to the health of the population; biological data indicates that an archery-only general season in Grayson County would have a negligible impact on deer populations in that county; bonus white-tailed deer tags may be safely provided on properties for which a finite harvest quota has been determined under a department-approved management plan; controlled deer harvest on certain wildlife management areas jointly managed by the department and the U.S. Forest Service can be provided just as sensibly by U.S. Forest Service authorization as by department permit; and the redesignation of highways serving as regulatory boundaries necessitates conforming regulatory language to preserve the biological integrity of hunting regulations. Section 65.46 is justified because biological and demographic data indicate that additional conservative hunting opportunity can be safely provided. Section 65.72 is justified because: restriction of certain species of baitfish in West Texas offers protection to endangered species of fishes; biological data indicate that the harvest of smaller walleye is justified to attain a better population structure; existing regulations for largemouth bass on Lakes Brownwood, Champion Creek, Coleman, Striker, Tyler State Park, and Weatherford, Fort Phantom Hill and E. V. Spence were experimental and the department has decided to return to the standard statewide regulations in light of the negligible effectiveness of the experimental regulations; biological data indicate that smaller bass can be harvested on Lake Murvaul without negatively impacting the health of bass populations; the temporary retention of fish for weighing purposes is not likely to result in statistically significant fish mortality; allowing the use of hand-held devices underwater is inconsistent with the equitable distribution of fishing opportunity; and conforming state regulations to federal regulations in federal waters reduces angler confusion and enhances enforcement activities.

The amendment to §65.11, concerning Lawful Means, modifies the provisions of paragraph (1)(B) to reflect the fact that muzzleloader-only seasons now apply to spike-bucks as well as antlerless deer. The amendment to §65.26, concerning Managed Lands Deer Permits, adds provisions for the use of bonus tags in conjunction with MLD permits and specifies that the provisions of muzzleloader-only seasons do not apply on properties qualifying for an extended season and enhanced bag limit. The amendment to §65.28, concerning Landowner Assisted Management Permit System, adds provisions for the use of bonus tags in conjunction with LAMPS permits. The amendment to §65.42, concerning Deer: increases the statewide bag limit for white-tailed deer for persons who purchase a bonus tag; specifies the conditions for use of the bonus tag; eliminates 'doe days' in Archer, Baylor, Clay, Montague, and Wise counties; expands the number of 'doe days' in the counties listed in paragraph (4)(C); and creates a restricted general season in Grayson County. The amendment to §65.46, concerning Squirrel, creates a youth-only open season in certain counties. The amendment to §65.72, concerning Fish: establishes a prohibition on the underwater use of hand-operated devices to take fish; modifies the statewide walleye regulations to allow two walleye of less than 16 inches in the daily bag limit; reduces the minimum length for largemouth bass from 16 to 14 inches on Lakes Brownwood, Champion Creek, and Coleman; removes the 14-18 inch length limit on Lakes Striker, Tyler State Park, and Weatherford, which places these lakes under the statewide 14-inch minimum length and 5-fish daily bag limit; imposes a 12-inch minimum length limit for blue catfish and a 25-fish daily bag limit for blue and channel catfish on Fort Phantom Hill and E.V. Spence Reservoirs; creates a 14-21 inch slot limit for largemouth bass on Lake Murvaul while allowing one fish per day over 21 inches to be retained; changes the minimum allowable length limit for temporarily weighing and retaining largemouth bass on Purtis Creek State Park Lake and all water bodies within the boundaries of Purtis Creek State Park, Gibbons Creek Reservoir and all waters within Texas Municipal Power Agency property, and Lake Raven to 21 inches; restricts baitfish use in Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties to common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, Mexican tetra, Rio Grande cichlid, silversides, and golden shiners; and conforms regulations for king mackerel and red snapper with proposed regulations for federal waters.

The department received 215 comments opposing the proposed opening date of deer season in Blanco, Llano, Gillespie, and Mason counties on the basis that it would reduce hunter opportunity, would not result in higher quality deer, and would negatively impact local economies. The department agrees that hunter opportunity would be reduced and that there would be no appreciable biological benefit for the resource, and has made changes accordingly. The department received 227 comments in support of the proposed amendment.

The department received 13 comments opposed to the proposal to restrict the harvest of buck deer in Austin, Colorado, Lavaca, and Fayette counties. The commenters stated that fragmented land ownership, high hunting pressure, and poor habitat could not be offset by the proposal and that the regulation would make 90% of the bucks in those counties unavailable for lawful hunting. The department agrees with the commenters and further adds that Parks and Wildlife Code requires the department to prevent conditions of waste or depletion, but does not authorize the promulgation of regulations merely on the basis of aesthetics. The department has made changes accordingly. The department received 399 comments in favor of the proposal.

The department received 5 comments against the proposal to restrict the harvest of buck deer in Washington County. The commenters stated that the proposed regulation would make 90% of the buck deer in the county unavailable for lawful

hunting. The department agrees with the commenters and has made changes accordingly, and further adds that Parks and Wildlife Code requires the department to prevent conditions of waste or depletion, but does not authorize the promulgation of regulations merely on the basis of aesthetics. The department received 175 comments in favor of the proposal.

The department received two comments opposed to the opening of a general season for deer in Grayson County because it would negatively affect migratory bird hunting. The department disagrees with the comments and responds that deer season does not unduly conflict with migratory game bird seasons in other counties around Grayson County, or anywhere else in the state, for that matter. No changes were made as a result of the comments. The department received 322 comments in favor of the proposal.

The department received 25 comments opposing a proposal that would have prohibited, during the archery-only season, any device built into or attached to a bow that would enable the bow to be locked at full or partial draw. The commenters stated that such a device enabled youth, seniors, and other hunters who would ordinarily be unable to draw a traditional bow to participate in archery hunting, and that the device did not deprive other hunters of recreational opportunity or affect the quality of hunting enjoyed by hunters who preferred not to use the device. The department agrees with the commenters and has made changes accordingly. The department received four comments in favor of the proposal.

The department received 42 comments opposing the proposal to create a bonus white-tailed deer tag. Commenters were opposed primarily on the grounds that such a tag would benefit only large landowners and affluent hunters; that the fee wasn't high enough, and because the present bag limits are sufficient. The department disagrees with the comments and responds that the bonus tag is a management tool and can only be used in conjunction with department-approved management plans that specify a finite harvest quota, that the fee was set to make the tag affordable to the greatest number of people, and that the anticipated demand for the tags will be less than half of one percent of the state's licensed hunters. No changes were made as a result of the comments. The department received 9 comments in favor of the proposal.

The department received six comments opposing the proposal to eliminate 'doe days' in several North Texas counties. The commenters stated that the doe population was not large enough to sustain either-sex hunting on a full-season basis. The department disagrees with the comments and responds that population surveys indicate that the antlerless deer population in the affected counties is sufficient to justify the creation of additional opportunity. No changes were made as a result of the comments. Nine comments in favor of the proposal were received.

The department received 116 comments opposing the proposal creating a slot limit for largemouth bass on Lake Murvaul and allowing one fish per day of over 21 inches to be retained, largely on the basis that the rule would negatively impact tournament fishing. The department disagrees with the comments and responds that the proposal will improve the quality of angling for bass and alleviate some potential structural problems in the bass population. No changes were made as a result of the comments. The department received nine comments in favor of the proposal.

The department received one comment in favor of the proposal to change the length limit on blue catfish back to the statewide limit of 12 inches on Fort Phantom Hill Reservoir.

The department received one comment opposing the proposal to change the minimum length limit for temporary weighing on Purtis Creek State Park Lake. The department disagrees with the comment and responds that any additional mortality of bass will be minimal and will be out-weighed by additional opportunity to weigh big bass.

The department received two comments opposing the proposal to decrease the daily bag limit on red snapper. The department disagrees with the comments and responds that the current minimum size limit and proposed reduced daily bag and possession limits correspond to a regulation implemented by the Gulf of Mexico Fishery Management Council in federal waters where most of the red snapper fishery occurs. This would insure consistency in regulation enforcement and reduce confusion for anglers. In addition, the biomass yield per recruit and the spawning success of the over fished red snapper stocks would be improved. No changes were made as a result of the comments.

Subchapter A. Statewide Hunting and Fishing Proclamation

Division 1. General Provisions

31 TAC §§65.11, 65.26, 65.28

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), and Chapter 67, which provide the Commission with authority to establish wildlife resource regulations for this state; and under §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Parks and Wildlife Code, Chapter 42.

§65.11. Lawful Means.

It is unlawful to hunt any of the wildlife resources of this state except by the means authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) Firearms.

(A) (No change.)

(B) Special muzzleloader-only deer seasons are restricted to muzzleloading firearms only.

(C)-(D) (No change.)

(2) Archery.

(A)-(D) (No change.)

(E) Special archery-only seasons are restricted to lawful archery equipment only, except as provided in paragraph (3) of this section.

(3)-(5) (No change.)

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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Gene McCarty
Chief of Staff

Texas Parks and Wildlife Department
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Division 2. Open Seasons and Bag Limits-Hunting Provisions

31 TAC §65.42, §65.46

The amendments are adopted under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

§65.42. Deer.

(a) Except as provided in §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits) or paragraph (10) of this subsection, no person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck).

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In Bandera, Bexar, Blanco, Brewster, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Culberson, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Jeff Davis, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Pecos, Presidio, Reagan, Real, Reeves, Runnels, San Saba, Schleicher, Sterling, Sutton, Terrell, Tom Green, Travis (west of Interstate 35), Upton (that southeastern portion located both south of U.S. Highway 67 and east of State Highway 349), Uvalde (north of U.S. Highway 90), and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(2) In Aransas, Atascosa, Bee, Calhoun, Cameron, Hidalgo, Live Oak, Nueces, Refugio, San Patricio, Starr, and Willacy counties, there is a general open season.

(A) Open season: second Saturday in November through the third Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(3) In Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Maverick, McMullen, Medina (south of U.S. Highway 90), Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a general open season.

(A) Open season: Second Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(4) No person may take or attempt to take more than one buck deer per license year from the counties, in the aggregate, listed within this paragraph, except as provided in subsection (a) of this section or authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits).

(A) In Archer, Baylor, Bell (west of Interstate 35), Bosque, Callahan, Clay, Comanche, Coryell, Eastland, Erath, Grayson, Hamilton, Hood, Jack, Lampasas, McLennan, Montague, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Williamson (west of Interstate 35), Wise, and Young counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Special regulation. In Grayson County:

(I) lawful means are restricted to lawful archery equipment and crossbows only; and

(II) antlerless deer shall be taken by MLD permit only, except on the Hagerman National Wildlife Refuge.

(B) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Harris, Jackson (south of U.S. Highway 59), Matagorda, Victoria (that portion of the county that is south of both U.S. Highway 59 and U.S. Business Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. If MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits.

(C) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Haskell, Hemphill, Hutchinson, Jones, Kent, King, Knox, Lipscomb, Motley, Ochiltree, Randall, Roberts, Scurry, Stonewall, Swisher, Wheeler, Wichita, and Wilbarger counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first 16 days, antlerless deer may be taken only by MLD antlerless permits.

(D) In Cooke, Denton, Hill, Johnson, and Tarrant counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first nine days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first nine days, antlerless deer may be taken only by MLD antlerless permits.

(E) In Anderson, Bowie, Brazos, Burleson, Camp, Cass, Cherokee, Delta, Franklin, Freestone, Gregg, Grimes, Harrison, Henderson, Hopkins, Houston, Lamar, Leon, Limestone, Madison, Marion, Morris, Navarro, Red River, Robertson, Rusk, San Jacinto, Smith, Titus, Trinity, Upshur, Van Zandt, Walker, and Wood counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits or LAMPS permits.

(iv) Special Requirement: In that portion of Henderson County bounded on the north by the county line, on the east by U.S. Highway 175 and Tin Can Alley Road, on the south by State Highway 31, and on the west by State Highway 274, hunting of deer is restricted to shotguns with buckshot, longbow, compound bow, recurved bow, or crossbow. Other game animals or game birds may be taken only with shotgun, longbow, compound bow, recurved bow, or crossbow.

(F) In Dallam, Hartley, Moore, Oldham, Potter, and Sherman Counties, there is a general open season.

(i) Open season: Saturday before Thanksgiving for 16 consecutive days.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(G) In Nacogdoches, Panola, Sabine, San Augustine and Shelby Counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by MLD antlerless deer permits or LAMPS permits. On National Forest, Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(H) In Austin, Bastrop, Bell (east of Interstate 35), Caldwell, Colorado, Comal (east of Interstate 35), Crane, DeWitt, Ector, Ellis, Falls, Fannin, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of Interstate 35), Hunt, Jackson (north of U.S. Highway 59), Karnes, Kaufman, Lavaca, Lee, Loving, Midland, Milam, Rains, Travis (east of Interstate 35), Upton (that portion located north of U.S. Highway 67; and that area located both south of U.S. Highway 67 and west of state highway 349), Victoria (that portion of the county that is north of both U.S. Highway 59 and U.S. Business Highway 59), Waller, Ward, Washington, Wharton (north of U.S. Highway 59), Williamson (east of Interstate 35), and Wilson counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(5) In Angelina, Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, and Tyler counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits. On the Sam Houston, Bannister, Alabama Creek, and Moore Plantation Wildlife Management Areas, antlerless deer may only be taken by written authorization of the U.S. Forest Service.

(6) In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(7) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(8) Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Bandera, Bexar, Blanco, Brewster, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Culberson, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Jeff Davis, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, Medina (north of U.S. Highway 90), Menard, McCulloch, Mills, Mitchell, Nolan, Pecos, Presidio, Reagan, Real, Reeves, Runnels, San Saba, Schleicher, Sterling, Sutton, Terrell, Tom Green, Travis (west of Interstate 35), Upton (that portion located both south of U.S. Highway 67 and east of state highway 349), Uvalde (north of U.S. Highway 90), and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. Highway 90 and west of Spur 239) counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(B) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(C) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(9) Special Youth-Only Season. There shall be a special youth-only general hunting season in all counties where there is a general open season.

(A) open season: the Saturday and Sunday immediately preceding the first Saturday in November.

(B) bag limits, provisions for the take of antlerless deer, and special requirements:

(i) as specified for the first two days of the general season in the individual counties in paragraphs (1)-(6) of this subsection, except as provided in item (ii) of this subparagraph; and

(ii) in the counties listed in paragraph (4)(G) of this subsection, as specified for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(C) Only licensed hunters 16 years of age or younger may hunt during the season established by this subsection.

(10) Bonus tag.

(A) A person in possession of a valid bonus deer tag may take one buck or antlerless white-tailed deer during an open white-tailed deer season in any county, irrespective of the county bag limit, provided that person also possesses one of the following:

(i) an appropriate, valid MLD permit (buck or antlerless);

(ii) a valid LAMPS permit (antlerless only); or

(iii) an appropriate, valid Special Permit (buck or antlerless) issued by the department for a public hunt, in which case the bonus tag is valid only on the wildlife management area or state park specified by the permit and only during the date and time specified on the permit.

(B) No person may:

(i) purchase more than five bonus tags per license year;

(ii) use a bonus tag on more than one animal; or

(iii) buy, sell, or otherwise exchange a bonus tag for remuneration or considerations of any kind; however, a bonus tag may be given to another person.

(C) A person who kills a deer shall immediately attach a properly executed bonus tag to the deer.

(c) (No change.)

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903373
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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Proposal publication date: March 5, 1999
For further information, please call: (512) 389–4775

♦ ♦ ♦

Division 3. Seasons and Bag Limits-Fishing Provisions

31 TAC §65.72

The amendment is adopted under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

§65.72. Fish.

(a) General rules.

(1)-(5) No change.)

(6) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (Atherinidae family).

(b) Bag, possession, and length limits. The bag and possession limits for red snapper become effective May 20, 1999.

(1) (No change.)

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) (No change.)

(B) Statewide daily bag and length limits shall be as follows:
Figure: 31 TAC §65.72(b)(2)(B)

(C) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) The following is a figure:
Figure: 31 TAC 65.72(b)(2)(C)(i)

(ii) (No change.)

(c) Devices, means and methods.

(1)-(4) (No change.)

(5) Device Restrictions.

(A)-(H) (No change.)

(I) Pole and line.

(i) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(ii) Game and nongame fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take nongame fish.

(iii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(J)-(R) (No change.)

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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Gene McCarty
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For further information, please call: (512) 389–4775

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Subchapter H. Public Lands Proclamation

31 TAC §65.192

The Texas Parks and Wildlife Commission adopts an amendment to §65.192, concerning the Public Lands Proclamation, without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1579).

The rule is necessary to provide a mechanism for delaying or canceling hunts when circumstances make it impractical or dangerous to hold them at their scheduled times.

The rule will function by authorizing the executive director to postpone or cancel hunts in response to severe weather and other emergencies.

The department received no comments concerning adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands and authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources; Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife; and §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Chapter 42.

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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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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Chapter 69. Resource Protection

Subchapter D. Memorandum of Understanding

31 TAC §69.71

The Texas Parks and Wildlife Commission adopts the repeal of §69.71 and new §69.71, concerning Memorandum of Understanding (MOU) with the Texas Department of Transportation, without changes to the proposed text as published in the March 5, 1999, issue of the Texas Register (24 TexReg 1579). The new section adopts by reference the provisions of 43 TAC §2.22, which contains the text of an MOU required by Transportation Code, §201.607.

The repeal and new rule are necessary to implement the statutory duty of the Texas Department of Transportation and the Texas Parks and Wildlife Department to enter into cooperative agreements for the protection and preservation of the natural environment.

The repeal and new rule will function by codifying procedures providing for Texas Parks and Wildlife Department (TPWD) review of TxDOT projects that have the potential to affect natural resources within the jurisdiction of TPWD.

The department received no comments concerning adoption of the proposed rule.

The repeal is adopted under Transportation Code, §201.607, which requires each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources to examine and revise their memorandum of understanding with the Texas Department of Transportation.

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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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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Proposal publication date: March 5, 1999
For further information, please call: (512) 389-4775

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The new section is adopted under Transportation Code, §201.607, which requires each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources to examine and revise their memorandum of understanding with the Texas Department of Transportation.

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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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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Part XV. Texas Low-Level Radioactive Waste Disposal Authority

Chapter 450. Planning and Implementation Fees

Subchapter A. Assessment of Fees

31 TAC §§450.1-450.4

(Editor's Note: Due to an error by the Texas Register, the wrong version of the proposed text was published in the April 23, 1999, issue of the Texas Register (24 TexReg 3182). The Texas Register inadvertently reprinted text originally proposed in the January 22, 1999, issue of the Texas Register (24 TexReg 371). The agency withdrew the January 22 proposal (24 TexReg 3195) when it filed a second version of the proposed sections. The second version as filed by the agency in April contained a later date for payment of fees under §450.4(b). The text is being adopted by the agency without changes to the proposed text as filed with the Office of the Secretary of State on April 6, 1999.)

The Texas Low-Level Radioactive Waste Disposal Authority adopts amendments to 31 TAC §§450.1-450.4, concerning planning and implementation fees for low-level radioactive waste generators for the state's fiscal year 1999. The amended sections are adopted without changes to the proposed text in the April 23, 1999 issue of the *Texas Register* (24 TexReg 3182).

The amended sections assess the fees, specifies which entities should pay the fees, and provides for the collection and deposit of fees in the state treasury.

The amendments are necessary to comply with the Health and Safety Code, §402.2721 that authorizes the adoption by rule of planning and implementation fees for each fiscal year. Fees collected in 1999 will be applied to the Authority's costs as set out in the Authority's appropriation bill for 1999.

Comments on the proposed rule were received from the South Texas Project Nuclear Operating Company and Texas Utilities Electric Company. Both companies requested the Authority to defer adoption of the rule pending pertinent changes in legislation that could affect fee assessments, and to re-asses the need for the rule in light of the current balance in the Low-Level Waste Fund.

Authority responds that as of late May 1999, there was no pending legislation that would affect the statutory duty of the Authority to adopt a rule assessing fees for FY 1999. An assessment is also required by the Authority's 1999 appropriations bill and that assessment is to be made regardless of the balance in the Low-Level Waste Fund. In FY 2000, balances in the Fund can be used to off-set assessments for that year.

The amendments are adopted under the Health and Safety Code, §402.054 which provides the Texas Low-Level Radioactive Waste Disposal Authority with the authority to adopt rules, standards, and orders necessary to properly carry out the Texas Low-Level Radioactive Waste Disposal Authority Act, and §402.2721 which directs the Authority to adopt planning and implementation fees.

The Texas Health and Safety Code, §402.054 and §402.2721 are affected by the amended sections.

§450.4. Collection of Fees.

(a) Fees assessed by the board shall be collected by the Texas Department of Health and deposited in the state treasury in accordance with the Health and Safety Code, §§401.301, 401.306, and 402.0721.

(b) Fees assessed under this subchapter shall be paid in one payment equal to the 1999 assessment on or before July 1, 1999.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903360
Lee H. Matthews
Deputy General Manager and General Counsel
Texas Low-Level Radioactive Waste Disposal Authority
Effective date: June 29, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 451-5292

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter AA. Vendor Payment

40 TAC §19.2609

The Texas Department of Human Services (DHS) adopts new §19.2609 without changes to the proposed text published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 373). The text will not be republished.

Justification for the new section is that a business rule for the new Claims Management System, a joint undertaking of the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and the National Heritage Insurance Company (NHIC), requires that claims be submitted within 180 days of service. The department made the rule change to conform to the business rule.

The new section will function by implementing a business rule for the claims management system (CMS) project. Under the CMS project, DHS and the Texas Department of Mental Health and Mental Retardation have partnered with the National Heritage Insurance Company (NHIC) to develop an automated business system to consolidate claims submission and processing for 19 different long term care programs of the two agencies. The rule states that claims should be submitted within 180 days of service.

The department received a comment regarding adoption of the amendment from the Texas Health Care Association. A summary of the comment and the department's response follows.

Comment: The Texas Health Care Association (THCA) believes the proposed rules appear to directly violate the Austin Court of Appeals ruling in the Texas Department of Human Services, et al. v. Christian Care Centers, Inc., litigation of 1991. In its ruling, the court determined that the department has no authority to withhold payment for care given simply because of late submission of paperwork. In fact, Medicaid and Medicare law presumes that providers will be paid for care given.

The Texas Legislature, in its appropriations bill, assumes a two-year window for payment of bills owed by the state for services provided. In fact, the Legislature provides a mechanism for payment of claims older than two years through its "miscellaneous claims" legislation (House Bill 2778, 75th Legislative Session (1997)). Together, these bills clearly show that the Legislature intends to pay the legitimate claims for goods and services provided to the state.

THCA disagrees with the department's claim that there will be no fiscal impact resulting from the implementation of this rule. THCA suggests that the department calculate the total dollar amount of claims paid in the last year on claims in excess of 180 days. The result would be a good estimate of the fiscal impact that this rule would have on providers, if implemented.

The federal regulations at 42 CFR 447.45(d) acknowledge that a 12-month window for claims submission is acceptable. Although one reason for a claim exceeding 180 days can be a lack of timeliness on the provider's part in submitting the claim, there are many, many times that this lack of timeliness is entirely beyond the control of the provider. Private insurance and Medicare Part A eligibility denials and the subsequent appeals processes, for example, can easily exceed two years. In addition, Medicare has a new payment system and we do not know how long it will take to process claims and denials. This proposed rule would restrict cash flow and result in undue hardship on providers for actions that are often entirely beyond their control.

Many nursing facilities admit people who are applying for SSI; many of these people have no income and cannot apply for Medicaid until the SSI process is approved. This process takes at least six months to complete, and can take much longer if documentation is difficult to find. (In the proposed rule it states that claims submitted after 180 days may be paid after approval by DHS. The proposed rule further states that the 180-day billing period begins when eligibility is established.) The potential for extreme fiscal impact for every nursing facility is tremendous. The proposed rules also state that "an excessive number of late claims or adjustments may subject the service provider's claims procedures to audit by DHS." The Medicaid Eligibility worker reviews all patient files every six months; this review can result in a reduction or increase of patient applied income. When the facility receives this document an adjustment is necessary. As you can see this could take over 180 days.

Submission of a "claim" by a nursing facility is not a simple process. It involves submission of several types of forms such as 3652, 3618, and 3619 plus the new CMS Data Entry. An error on any one of these forms could be considered as "failure to submit a claim."

A major concern is the fact that there is no process, procedure, or guidelines set forth in the draft rules regarding the approval process by DHS for late submitted claims. Another major concern is that TDHS is not required in the rule to give notice to the facility that reimbursement is going to cease.

In summary, this proposed rule might violate a court ruling that TDHS has no authority to withhold payment for care given simply because of late submission of paperwork. Also, this proposed rule would have a negative fiscal impact on providers and violate legislative intent. If a nursing facility provides reimbursable services, the department should pay for the service. I appreciate the opportunity to provide these comments.

Response: The department does not agree with the comment. The proposed rule does not give DHS the authority to withhold payment; in fact, it specifically allows TDHS to pay late claims. The 180-day deadline in the rule is for purposes of encouraging timely submission of claims, which benefits both the department and the provider.

The commenter's concern about the length of time it takes to establish Medicaid eligibility is specifically addressed by the rule, which states, "In the event that Medicaid eligibility for benefits is established after provision of services, the 180-day period for submission of claims will start on the date eligibility is established."

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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TRD-9903338

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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Proposal publication date: January 22, 1999
For further information, please call: (512) 348–3765

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Chapter 41. Utilization Review

The Texas Department of Human Services (DHS) adopts the repeal of §§41.1-41.5, 41.201, 41.301, 41.302, 41.401-41.403, 41.501-41.503, 41.601, 41.701-41.704, 41.801, and 41.802, without changes to the proposed text published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3046). The text will not be republished.

Justification for the repeals is to delete obsolete rules.

The repeals will function by deleting obsolete material.

The department received no comments regarding adoption of the repeals.

Subchapter A. Out-of-State Vendor Payments on Behalf of Texas Residents

40 TAC §§41.1-41.5

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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Proposal publication date: April 16, 1999
For further information, please call: (512) 438-3765

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Subchapter B. Health Insuring Agent

40 TAC §41.201

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance pro- grams; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3765

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Subchapter C. Implementation Procedures for Nursing Facilities

40 TAC §41.301, §41.302

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance pro- grams; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche
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For further information, please call: (512) 438-3765

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Subchapter D. Skilled Nursing Facility Procedural Guide

40 TAC §§41.401-41.403

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance pro- grams; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche

General Counsel, Legal Services
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Subchapter E. Intermediate Care Facility Procedural Guide

40 TAC §§41.501–41.503

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance pro- grams; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche
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Texas Department of Human Services
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Subchapter F. Utilization Review Committees

40 TAC §41.601

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance pro- grams; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche
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Subchapter G. Long-Term Care Unit Procedures

40 TAC §§41.701–41.704

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance pro- grams; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche
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Subchapter H. Level-of-Care Criteria

40 TAC §41.801, §41.802

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance pro- grams; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438–3765

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Chapter 43. Utilization Control

The Texas Department of Human Services (DHS) adopts the repeal of §§43.1, 43.11, 43.21, 43.31, 43.41, 43.51, 43.61, 43.71, 43.81, 43.91, and 43.101, without changes as proposed and published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3049). The text will not be republished.

Justification for the repeals is to delete obsolete rules.

The repeals will function by deleting obsolete material.

The department received no comments regarding adoption of the repeals.

Subchapter A. Management Responsibilities

40 TAC §43.1

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche
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For further information, please call: (512) 438–3765

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Subchapter B. Exception Management

40 TAC §43.11

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche
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Subchapter C. Program

40 TAC §43.21

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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Paul Leche
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Texas Department of Human Services
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For further information, please call: (512) 438–3765

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Subchapter D. Health Care Standards

40 TAC §43.31

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903390
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 438–3765

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Subchapter E. Educational Programs

40 TAC §43.41

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903391
Paul Leche
General Counsel, Legal Services

Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 438–3765

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Subchapter F. Review of Pharmaceutical Services

40 TAC §43.51

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903392
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 438-3765

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Subchapter G. Review of New Drug Applications

40 TAC §43.61

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903393
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 438-3765

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Subchapter H. Therapeutic Classification of Drugs

40 TAC §43.71

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903394
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 438-3765

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Subchapter I. Monitoring Drug Laws, Regulations, and Marketing Procedures

40 TAC §43.81

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903395
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 438-3765

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Subchapter J. Research, Development, and Application of Quantitative Techniques

40 TAC §43.91

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903396
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 438-3765

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Subchapter K. Quantitative Analysis in Developing Criteria

40 TAC §43.101

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 9, 1999.

TRD-9903397
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 438-3765

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Chapter 48. Community Care for Aged and Disabled

The Texas Department of Human Services (DHS) adopts the repeal of §48.2107, §48.2809, and §48.6013, and an amendment to §48.2807, without changes to the proposed text published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 376).

Justification for the repeals and the amendment is that a business rule for the new Claims Management System, a joint undertaking of the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and the National Heritage Insurance Company (NHIC), requires that claims be submitted within 180 days of service. The department made the rule change to conform to the business rule.

The amendment will function by implementing a business rule for the claims management system (CMS) project. Under the CMS project, DHS and the Texas Department of Mental Health and Mental Retardation have partnered with the National Heritage Insurance Company (NHIC) to develop an automated business system to consolidate claims submission and processing for 19 different long term care programs of the two agencies. The rule states that claims should be submitted within 180 days of service.

The department received no comments regarding adoption of the proposal.

Subchapter C. Medicaid Waiver Program for Persons with Related Conditions

40 TAC §48.2107

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 8, 1999.

TRD-9903339
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: January 22, 1999
For further information, please call: (512) 438-3765

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Subchapter G. Program for All-inclusive Care for the Elderly (PACE)

40 TAC §48.2807

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 8, 1999.

TRD-9903340
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999

Proposal publication date: January 22, 1999
For further information, please call: (512) 438-3765

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40 TAC §48.2809

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 8, 1999.

TRD-9903341
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: January 22, 1999
For further information, please call: (512) 438-3765

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Subchapter J. 1915(c) Medicaid Home and Community-based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care

40 TAC §48.6013

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 8, 1999.

TRD-9903342
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: January 22, 1999
For further information, please call: (512) 438-3765

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Chapter 49. Contracting for Community Care Services

40 TAC §49.9

The Texas Department of Human Services (DHS) adopts an amendment to §49.9 without changes to the proposed text published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 379). The text will not be republished.

Justification for the amendment is that a business rule for the new Claims Management System, a joint undertaking of the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and the National Heritage Insurance Company (NHIC), requires that claims be submitted within 180 days of service. The department made the rule change to conform to the business rule.

The amendment will function by implementing a business rule for the claims management system (CMS) project. Under the CMS project, DHS and the Texas Department of Mental Health and Mental Retardation have partnered with the National Heritage Insurance Company (NHIC) to develop an automated business system to consolidate claims submission and processing for 19 different long term care programs of the two agencies. The rule states that claims should be submitted within 180 days of service.

The department received a comment regarding adoption of the amendment from the Texas Association for Home Care. A summary of the comment and the department's response follows.

Comment: The Texas Association for Home Care, Inc., opposes the statement in §49.9 that "all payments are subject to availability of funds as provided by law." In the review process, it was stated by Department staff that there are contracts which state a maximum number of hours of service or dollars to be billed. Also, there are instances where billings may be settled after the end of the department's fiscal year, in which case legislative approval may be necessary. In order to address these circumstances, the first provision in the proposed rule which we are objecting to should be deleted. The second provision should be reworded to state " claims and adjustments received after the 180-day time period, or exceeding contract limits, may be paid upon approval by DHS, subject to availability of funds as provided by law." This would ensure the provider which does bill timely and within their contracted amount will get paid for services rendered in good faith.

Response: The department will retain the statement "all payments are subject to availability of funds as provided by law." This is merely a statement of fact. The department will retain the second provision: "Claims and adjustments received after the 180-day time period may be paid upon approval by DHS." This rule sets a time limit for submitting claims. The provision merely provides that DHS may approve late claims for payment. There may be a number of reasons why this would occur and there is no reason to list any one reason.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on June 8, 1999.

TRD-9903343
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1999
Proposal publication date: January 22, 1999
For further information, please call: (512) 438–3765

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Part II. Texas Rehabilitation Commission

Chapter 106. Contract Administration

Subchapter A. Acquisition of Client Goods and Services

40 TAC §106.35

The Texas Rehabilitation Commission (TRC) adopts an amendment to §106.35 concerning Acquisition of Client Goods and Services, without changes to the proposed text as published in the May 7, 1999, issue of the *Texas Register* and will not be republished.

The section is amended to include grants within the appeal rules for contracts.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

Filed with the Office of the Secretary of State on June 8, 1999.

TRD-9903326
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: June 28, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 424–4050

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action

The Commissioner of Insurance at a public hearing under Docket Number 2411 scheduled for July 27, 1999 at 9:00 a.m., in room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks adoption of amendments for residential property Endorsements, HO-190, Texas Homeowner Policy Sworn Statement In Proof Of Loss, and TDP-014, Texas Dwelling Policy Sworn Statement In Proof Of Loss. Staff's petition (Reference Number P-0699-08-I), was filed on June 9, 1999.

The above-prescribed forms utilize pre-printing of the century so that the year can be completed by supplying the last two digits. These forms have places where dates are to be supplied and they use "19__."

Staff proposes to amend Endorsements HO-190 Texas Homeowners Policy Sworn Statement in Proof Of Loss and TDP-014 Texas Dwelling Policy Sworn Statement to delete "_____ ,19__" and replace with "_____ , ____." (Month) (Year)

A copy of the petition, including an exhibit with the full text of the proposed amendments to the endorsements is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Reference Number P-0699-08-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas, 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Division, Texas Department of Insurance, P.O. Box 149104, MC 104-5A. Austin, Texas, 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from requirement of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9903530
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 14, 1999

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Adopted Actions

The Commissioner of Insurance ("Commissioner") at a public hearing under Docket Number 2407 on June 11, 1999, held at 10:00 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments to the Texas Commercial Lines Statistical Plan as proposed by the staff of the Texas Department of Insurance ("TDI").

The amendments proposed are to: make revisions to company reporting instructions to correct the name and address of TDI's Commercial Lines Statistical Agent; require that unused portions of numeric and alphanumeric fields be zero filled; require that insurers report data via diskette in ASCII fixed-length format only; remove references to Annual Statement Line 25 (Glass); add a footnote for Commercial Automobile Employer's Non-ownership classes to indicate that these classes are not applicable for Liability Assigned Risks; update General Liability Premises & Operations and Products & Completed Operations classes, exposure bases and codes; add ISO Texas Fire Subline Codes; modify descriptions for Time Element coverage codes on run-off transactions; add Basic Group II construction definitions and rating categories; clarify that construction definitions and classes for all coverages other than those including wind should reflect fire construction criteria; add class codes for Bobtail and Deadhead coverages as part of Special Types; add class codes for Commercial Automobile Special Types under Leasing and Rental Concerns and for short term motorcycles, motorbikes and similar vehicles; add a class code under Commercial Automobile Special Types for Rental Car Companies; and make minor editorial changes to various fields and statistical codes for clarification purposes. Staff's petition (Reference Number P-0499-04-I) proposing the amendments was filed with the TDI Chief Clerk on April 19, 1999, and notice of the filing was published in the April 30, 1999 issue of the *Texas Register* (24 TexReg 3361). Notice of the rescheduled hearing date was published on May 14, 1999 (24 TexReg 3779).

The Commissioner adopted all of the amendments described herein at the June 11, 1999 public hearing.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69. The Insurance Code, Articles 5.96 and 21.69 authorize the filing of this petition. Article 5.96 authorizes the Commissioner to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans and policy and endorsement forms for homeowners and dwellings insurance. Article 21.69 authorizes the Commissioner to contract with or designate a statistical agent to gather data from reporting insurers under a statistical plan and to adopt rules necessary to accomplish the purposes of that article.

The amendments as adopted by the Commissioner are filed with the TDI Chief Clerk under Reference Number P-0499-04-I and are incorporated by reference by Commissioner's Order 99-0856.

Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, TDI will notify all insurers writing the affected lines of insurance in this state. This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, chapter 2001).

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to the Texas Commercial Lines Statistical Plan as described herein, be adopted to be effective for reporting for all affected insurers on July 1, 1999.

TRD-9903601
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 16, 1999

♦ ♦ ♦

The Commissioner of Insurance ("Commissioner") at a public hearing under Docket Number 2408 on June 11, 1999, held at 10:00 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments to the Texas Statistical Plan for Residential Risks ("Stat Plan") as proposed by the staff of the Texas Department of Insurance ("TDI").

The amendments proposed are to: add a field and statistical codes for the Texas Windstorm Insurance Association ("TWIA") Building Code Credits; add additional Optional Credits statistical codes for Dwelling coverage; add a field and statistical codes for Law and Ordinance Coverage; remove the Texas Place Code Listing from the Stat Plan and reference it as a separate document; and make minor editorial changes to various fields and statistical codes for clarification purposes. Staff's petition (Reference Number P-0499-05-I) proposing the amendments was filed with the TDI Chief Clerk on April 19, 1999, and notice of the filing was published in the April 30, 1999 issue of the *Texas Register* (24 TexReg 3361). Notice of the rescheduled hearing date was published on May 14, 1999 (24 TexReg 3779)

The Commissioner adopted all of the amendments described herein at the June 11, 1999 public hearing.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69. The Insurance Code, Articles 5.96 and 21.69 authorize the filing of this petition. Article 5.96 authorizes the Commissioner to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans and policy and endorsement forms for homeowners and dwellings insurance. Article 21.69 authorizes the Commissioner to contract with or designate a statistical agent to gather data from reporting insurers under a statistical plan and to adopt rules necessary to accomplish the purposes of that article.

The amendments as adopted by the Commissioner are filed with the TDI Chief Clerk under Reference Number P-0499-05-I and are incorporated by reference by Commissioner's Order 99-0857.

Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, TDI will notify all insurers writing the affected lines of insurance in this state.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, chapter 2001).

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to the Texas Statistical Plan for Residential Risks as described herein, be adopted to be effective for reporting for all affected insurers on July 1, 1999.

TRD-9903600
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 16, 1999

♦ ♦ ♦

The Commissioner of Insurance ("Commissioner") at a public hearing under Docket Number 2409 on June 11, 1999, held at 10:00 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments to the Texas Statistical Plan for Residential Risks ("Stat Plan") as proposed by the American Insurance Association (AIA) with changes recommended by staff of the Texas Department of Insurance ("TDI").

The amendments proposed by AIA and TDI staff recommendations in response to these proposals are as follows: (1) AIA proposed to limit reporting requirements for roof construction only to "new" policies which receive a premium credit for hail-resistant roofs. TDI agrees that the reporting requirements should apply only to those polices which actually receive a hail-resistant roof premium credit, however, this information should be required of all policies which receive a hail-resistant roof premium credit rather than new policies only. This level of detail has been determined by TDI's Chief Property & Casualty Actuary to be the minimum information that can be collected in order to price such premium credits in the future. (2) AIA proposed that a roof construction category called "metal" be added and that categories "aluminum", "steel", and "copper" be eliminated. Staff recommended, and it is adopted, that "aluminum", "steel", and "copper" remain in the Stat Plan for those that choose to use them and that an additional roof construction category called "metal (specific type unknown)" be added for those that can't identify the specific type of metal material. (3) AIA proposed that roof construction categories "recycled roofing products" and "single ply membrane systems" be deleted based on their experience that most homeowners will not be able to identify these roof types. Staff recommended, and it is adopted, that since these roof types are currently being used by some, that they remain in the Stat Plan for those companies that are able to distinguish and report these categories. One written comment was received from the Office of Public Insurance Counsel in favor of the recommendations made by TDI staff to AIA's proposals. AIA's petition (Reference Number P-0499-03) proposing the amendments was filed with the TDI Chief Clerk on April 19, 1999, and notice of the filing was published in the April 30, 1999 issue of the *Texas Register* (24 TexReg 3362). Notice of the rescheduled hearing date was published on May 14, 1999 (24 TexReg 3779).

The Commissioner adopted the amendments described herein, with staff recommendations incorporated, after taking this matter under advisement at the June 11, 1999 public hearing.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69. The Insurance Code, Articles 5.96 and 21.69 authorize the filing of this petition. Article 5.96 authorizes the Commissioner to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans and policy and endorsement forms for homeowners and dwellings insurance. Article 21.69 authorizes the Commissioner to contract with or designate a statistical agent to gather data from reporting insurers under a statistical plan and to adopt rules necessary to accomplish the purposes of that article.

The amendments as adopted by the Commissioner are filed with the TDI Chief Clerk under Reference Number P-0499-03 and are incorporated by reference by Commissioner's Order 99-0858.

Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, TDI will notify all insurers writing the affected lines of insurance in this state.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, chapter 2001).

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to the Texas Statistical Plan for Residential Risks as described herein, be adopted to be effective for reporting for all affected insurers on July 1, 1999.

TRD-9903599
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 16, 1999

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. 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 Alcohol and Drug Abuse

Title 40, Part III

The Texas Commission on Alcohol and Drug Abuse proposes to review Chapter 142 concerning investigations and hearings, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As part of this review process, the commission is proposing amendments to §§142.22, 142.31 and 142.32. The proposed amendments may be found in the Proposed Rules section of this issue of the *Texas Register*.

During this review the commission will determine if the reasons for adopting this chapter continue to exist. The chapter will be reviewed to determine whether the rules reflect current legal and policy considerations or if they are obsolete.

Please submit written comments to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date this notice is published in the *Texas Register*.

TRD-9903519
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: June 14, 1999

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The Texas Commission on Alcohol and Drug Abuse proposes to review Chapter 143 concerning funding, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As part of this review process, the commission is proposing amendments to §§143.17 and 143.21 and new §143.3 and §143.25. The proposed amendments and new sections may be found in the Proposed Rules section of this issue of the *Texas Register*.

During this review the commission will determine if the reasons for adopting this chapter continue to exist. The chapter will be reviewed to determine whether the rules reflect current legal and policy considerations or if they are obsolete.

Please submit written comments to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date this notice is published in the *Texas Register*.

TRD-9903520
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: June 14, 1999

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The Texas Commission on Alcohol and Drug Abuse proposes to review Chapter 144 concerning contract requirements, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As part of this review process, the commission is proposing amendments to §§144.1, 144.21, 144.101-144.104, 144.106, 144.107, 144.123, 144.131, 144.133, 144.141, 144.142, 144.201, 144.211-144.216, 144.312, 144.313, 144.322, 144.324, 144.325, 144.411-144.416, 144.441-144.447, 144.511, 144.512, 144.521-144.525, 144.531, 144.532, 144.541, 144.543, 144.545, 144.551-144.554 and new sections 144.105, 144.108, 144.203, 144.204, 144.321, 144.326, 144.327, 144.417, 144.451-144.60, 144.462, 144.526, and 144.611-144.616. The commission is also proposing the repeal of §§144.105, 144.122, 144.125, 144.202, 144.321, 144.431-144.435, 144.533, 144.542, and 144.544. The proposed amendments, new sections and repeals may be found in the Proposed Rules section of this issue of the *Texas Register*.

During this review the Commission will determine if the reasons for adopting this chapter continue to exist. The chapter will be reviewed to determine whether the rules reflect current legal and policy considerations or if they are obsolete.

Please submit written comments to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date this notice is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on this rule review at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission

on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

TRD-9903521
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: June 14, 1999

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The Texas Commission on Alcohol and Drug Abuse proposes to review Chapter 148 concerning facility licensure, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As part of this review process, the commission is proposing amendments to §§148.3, 148.4, 148.21, 148.23, 148.27, 148.41, 148.61, 148.71-148.74, 148.112-148.114, 148.116, 148.117, 148.119, 148.141, 148.143, 148.161-148.163, 148.171-148.173, 148.181, 148.183, 148.185, 148.201, 148.202, 148.211-148.214, 148.231-148.233, 148.236, 148.252, 148.261-148.268, 148.281, 148.282, 148.284, 148.291-148.293, 148.301-148.304, 148.322-148.324, 148.331, 148.341, 148.353, 148.355 and new §§148.164, 148.203, 148.237, 148.238, 148.372 and 148.373. The commission is also proposing repeal of §§148.235 and 148.371. The proposed amendments, new sections and repeals may be found in the Proposed Rules section of this issue of the *Texas Register*.

During this review the Commission will determine if the reasons for adopting this chapter continue to exist. The chapter will be reviewed to determine whether the rules reflect current legal and policy considerations or if they are obsolete.

Please submit written comments to Tamara Allen, Quality Assurance, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date this notice is published in the *Texas Register*. In addition, there will be a hearing to receive public comments on this rule review at 4:30 p.m., Monday July 12, 1999, at the Austin Convention Center, 5000 East Cesar Chavez, Austin, Texas. If you have questions about the hearing, you may contact Albert Ruiz, Community Network Coordinator, Texas Commission on Alcohol and Drug Abuse, P. O. Box 80529, Austin, Texas 78708-0529; phone 1-800-832-9623, extension 6607; or via email albert_ruiz@tcada.state.tx.us.

TRD-9903522
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: June 14, 1999

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(Editor's Note: Due to an error by the Texas Register, the following notices for review of Chapters 37 and 39 were omitted from the June 4, 1999, issue of the Texas Register (24 TexReg 4255). The proposed notices for review of Chapters 35 and 36 were published in error. The following notices were filed with the Secretary of State on May 25, 1999.)

Texas Alcoholic Beverage Commission

Title 16, Part III

The Texas Alcoholic Beverage Commission files its notice of intention to review its rules contained in Title 16, Texas Administrative Code, Chapter 37, governing rules of practice in contested case hearings and penalties. This review is conducted pursuant to Appropriations Act, 1997, House Bill 1, Article IX, §167.

The commission will conduct its review through August 31, 1999, and will receive comments on whether the need for any rule contained within this chapter still exists and whether any of these rules require amendment. Amendments or repeal of existing rules proposed by the commission will appear in the proposed rules section of the *Texas Register* and will be acted on in accordance with normal state rule making procedures.

Comments may be directed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711.

TRD-9903065
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Filed: May 25, 1999

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The Texas Alcoholic Beverage Commission files its notice of intention to review its rules contained in Title 16, Texas Administrative Code, Chapter 39, governing ports of entry. This review is conducted pursuant to Appropriations Act, 1997, House Bill 1, Article IX, §167.

The commission will conduct its review through August 31, 1999, and will receive comments on whether the need for any rule contained within this chapter still exists and whether any of these rules require amendment. Amendments or repeal of existing rules proposed by the commission will appear in the proposed rules section of the *Texas Register* and will be acted on in accordance with normal state rule making procedures.

Comments may be directed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711.

TRD-9903066
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Filed: May 25, 1999

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Texas Real Estate Commission

Title 22, Part XXIII

The Texas Real Estate Commission proposes to review the following sections of Chapter 535 in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reason for adopting each of these sections continues to exist. Any questions pertaining to this notice of intention to review should be directed to Mark A. Moseley, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

§535.72. Mandatory Continuing Education: Presentation of Courses, Advertising and Records.

§535.73. Compliance and Enforcement.

§535.81. Recovery Fund: Fee.

TRD-9903462
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: June 11, 1999

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Adopted Rule Reviews

Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas (commission) has completed the review of Procedural Rules, Subchapter Q (relating to Post-Interconnection Agreement Dispute Resolution), §§22.321 relating to Purpose; 22.322 relating to Definitions; 22.323 relating to Filing of Agreement; 22.324 relating to Confidential Information; 22.325 relating to Informal Settlement Conference; 22.326 relating to Formal Dispute Resolution Agreement; 22.327 relating to Request for Expedited Ruling; and 22.328 relating to Request for Interim Ruling Pending Dispute Resolution as noticed in the March 5, 1999 *Texas Register* (24 TexReg 1643). The commission readopts these sections pursuant to the requirements of the Appropriations Act of 1997, HB 1, Article IX, §167 (§167) and finds that the reason for adopting these rules continues to exist. Project Number 17709 is assigned to this proceeding.

The commission received no comments on the §167 requirement as to whether the reason for adopting the rules continues to exist from MCI Worldcom, Inc. (MCIW). MCIW stated that the rules in Subchapter Q are critical to the development of a competitive telecommunications market place in Texas.

As part of this review process, the commission proposed amendments to §§22.322, 22.323 and 22.326 as published in the *Texas Register* on March 5, 1999 (24 TexReg 1519). MCIW filed comments on the proposed amendments. These comments are summarized in the preamble for the adoption of the proposed amendments. The commission proposed no changes to §§22.321, 22.324, 22.325, 22.327 or 22.328.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

TRD-9903437
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 10, 1999

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The Public Utility Commission of Texas (commission) has completed the review of Procedural Rules, Subchapter R (relating to Approval of Amendments to Existing Interconnection Agreements and Agreements Adopting Terms and Conditions Pursuant to FTA96 §252(i)), §22.341 relating to Approval of Amendments to Existing Interconnection Agreements, and §22.342 relating to Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA96) §252(i) as noticed in the March 26, 1999 *Texas Register* (24 TexReg 2361). The commission readopts §22.341 and §22.342 pursuant to the requirements of the Appropriations Act of 1997, HB 1, Article IX, §167 (§167) and finds that the reason for adopting these rules continues to exist. Project Number 20531 is assigned to this proceeding.

The commission received no comments on the §167 requirement as to whether the reason for adopting the rules continues to exist. As part of this review process, the commission proposed an amendment to §22.341 as published in the *Texas Register* on March 26, 1999 (24 TexReg 2122). The commission proposed no changes to §22.342. The Office of Public Utility Counsel (OPC) and Southwestern Bell Telephone Company (SWBT) filed comments on the proposed amendment. These comments are summarized in the preamble for the adoption of the proposed amendment.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

TRD-9903436
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 10, 1999

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

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, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department on Aging

Notice of Request for Proposals for Internal Audit Services

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter A, Texas Government Code, the Texas Department on Aging (TDoA) announces the issuance of a Request for Proposals (RFP) for the purpose of obtaining from qualified entities internal auditing services which will enable TDoA to continue to comply with the Texas Internal Auditing Act, Texas Government Code Annotated, 2102.001 et. seq. (Vernon 1999 Pamphlet) which details internal auditing services. In evaluating the proposals to provide Internal Auditing services, the Texas Board on Aging will evaluate each proposal based on the approach for required services, knowledge of governmental agencies, experience in providing internal auditing services, and the reasonableness of fee. The successful proposer will be expected to begin performance of the contract on or about September 1, 1999, and will continue through August 31, 2000.

Contact: Parties interested in submitting a proposal should contact the Frank Pennington, Director of Program and Fiscal Accountability, Texas Department on Aging, Box 12786, Austin, Texas 78711 (mail) or 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas (512)424-6840, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above referenced address on Friday, June 4, 1999 between 8:00 and 5:00 p.m., Central Daylight Savings Time (CDST) and thereafter, during normal business hours

Closing Date: One original and four copies of a proposal must be received in the Texas Department on Aging office by no later than 5:00 p.m. Central Daylight Saving Time (CDST), on July 23, 1999. Proposals received after this time and date will not be considered. Faxed submissions will not be accepted.

Award Procedure: Proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Executive Director, who will then make a recommendation to the Texas Board on Aging. The Board will make the final decision. A proposer may be asked to clarify his proposal, which may include an oral presentation prior to final selection.

The Texas Department on Aging reserves the right to accept or reject any or all proposals submitted. The Department on Aging is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Neither this notice nor the RFP commits the Department on Aging to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP - June 25; Proposals Due - July 23, 1999, 5:00pm Central Daylight Saving Time (CST); Award of Contract by Board on August 12, 1999, and Contract Execution on September 1, 1999, or as soon thereafter as possible.

TRD-9903573
Mary Sapp
Executive Director
Texas Department on Aging
Filed: June 15, 1999

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Office of the Attorney General

Correction of Errors

The Office of the Attorney General submitted notices of Opinions for publication in the May 28, 1999, Texas Register (24 TexReg 3953). Due to typographical errors by the Texas Register, corrections are noted as follows.

Opinion # JC-0045: The citation to the U.S.C. in the fourth line of the first paragraph should read "...12 U.S.C. 4903(a)..." The Texas Register omitted the "U" from "U.S.C."

Opinion #JC-0047: The word "whether" is misspelled in the third line of the first paragraph.

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Texas Water Code and Texas Health and Safety Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Health and Safety Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written

comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: State of Texas v. Marty W. Walenta, Case Number 96-14736, in the District Court of Travis County, Texas

Nature of Defendant's Operations: Defendant, Marty Walenta, operated an on-site sewage facility installer business in violation of the Texas Water Code, Texas Health and Safety Code and the Texas Natural Resource Conservation Commission rules, orders and licenses relating to the proper location, design, construction, installation, operation and maintenance of on-site sewage facilities. Defendant's compliance with the Texas Natural Resource Conservation Commission's July 17, 1996, order is the subject of this litigation and proposed settlement.

Proposed Agreed Judgment: The judgment permanently enjoins Defendant from constructing, altering, repairing, or extending, any on-site sewage disposal system without being properly licensed or registered by the Texas Natural Resource Conservation Commission or unless he is engaged in proper apprenticeship programs or employed by and under the direct supervision of a properly licensed or registered installer. Defendant is further enjoined from representing himself as a licensed or registered on-site sewage disposal system installer without being properly licensed or registered and he must submit to the Texas Natural Resource Conservation Commission all original and copies of his Installer Certificate Registration. Defendant shall pay $39,300 for administrative and civil penalties, $1,000 for attorney's fees and $171.00 for court costs..

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Eugene A. Clayborn, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9903576
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: June 15, 1999

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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. Requests for federal consistency review were received for the following projects(s) during the period of June 3, 1999, through June 10, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Petroleum Communications, Inc.; Location: The project begins approximately 2,000 feet northwest of Bryan Lake, near Quintana Beach, Brazoria County, Texas and extends to New Orleans, Louisiana; CCC Project Number: 99-0208-F1; Description of Proposed Action: The applicant proposes to install 810,546 feet of 1.5-inch-diameter fiber optics cable in the Gulf of Mexico. The cable will be buried three feet below the seafloor in water depths less than 200 feet except I Safety Fairways where it will be buried ten feet below the seafloor. Safety Fairways will be crossed in three locations. In waters greater than 200 feet, the cable will be laid on the seafloor bottom; Type of Application: U.S.A.C.E. permit application number 21689 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Mr. Gerald Jaco; Location: The project is located on the Jones Bay Channel at 300 Tiki Drive, Tiki Island, near Galveston, Galveston County, Texas; CCC Project Number: 99-0209-F1; Description of Proposed Action: The applicant proposes to retain approximately 0.2 acre of unauthorized fill placed in wetlands by a previous property owner, bulkhead and backfill approximately 480 feet of shoreline, and excavate a boat ramp. The bulkhead will consist of 558 feet of 12-foot concrete panels and will isolate approximately 0.93 acre of tidal wetlands; Type of Application: U.S.A.C.E. permit application number 21695 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Property Advisors, Inc.; Location: The project is located on the Gulf of Mexico beach, at the Point San Luis Subdivision, near San Luis Pass, on Galveston Island, in Galveston, Galveston County, Texas. The site can be located on the U.S.G.S. San Luis Pass Quadrangle; CCC Project Number: 99-0210-F1; Description of Proposed Action: The applicant proposes to place beach quality sand onto a 60-by 2,500-foot area of the beach. Approximately 4,400 cubic yards of material will be placed on the beach. Placement will start at the existing vegetation line and material will be placed to a depth of two feet; Type of Application: U.S.A.C.E. permit application number 21677 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at (512) 475-0680.

TRD-9903553
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: June 15, 1999

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Comptroller of Public Accounts

Certification of Crude Oil Prices

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined that the price of West Texas Intermediate crude oil as recorded on the New York Mercantile Exchange (NYMEX) is not below $15.00 per barrel for the three-month period beginning on March 1, 1999, and ending May 31, 1999. Therefore, pursuant to the Tax Code, §202.060, crude oil

produced during the month of June 1999 from a qualifying lease, as determined by the Railroad Commission of Texas, is not exempt from the crude oil tax imposed by the Tax Code, Chapter 202.

Inquires should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P. O. Box 13528, Austin, Texas 78711-3528.

TRD-9903548
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Filed: June 14, 1999

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Chapter 54, Subchapter F, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces the issuance of a Request for Proposals (RFP) for the purpose of hiring a consultant to assist the Board and Comptroller with marketing agent services in connection with the prepaid higher education tuition program. The Comptroller is the executive director and chairperson of the Board. The program is known as the Texas Tomorrow Fund. The Board is authorized to enter into one or more contracts for the performance of services relating to the administration of the program. The Comptroller, as executive director of the Board, is issuing this RFP in order that the Board may move forward with retaining services necessary to administer the program, provided that the vendor is subject to approval by the board. The Board has identified marketing agent services as a service required to administer the program. If approved by the Board, the successful proposer will be expected to begin performance of the contract on or about September 1, 1999.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, David R. Brown, Legal Counsel's Office, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above referenced address on Friday, June 25, 1999, between 2 p.m. and 5 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address no later than 2 p.m. (CZT) on Monday, July 19, 1999.

Closing Date: Proposals must be received in the Legal Counsel's Office no later than 2 p.m. (CZT), on Friday, August 6, 1999. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final selection as to a proposer to be recommended to the Board. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. Neither the Comptroller nor the Board is under any legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller or the Board to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP - June 25, 1999, 2 p.m. (CZT); Mandatory Letter of Intent and Questions Due - July 19, 1999, 2 p.m. (CZT); Proposals Due - August 6, 1999, 2 p.m. (CZT); and Contract Execution - August 20, 1999, or soon thereafter as possible.

TRD-9903602
David R. Brown
Legal Counsel
Comptroller of Public Accounts
Filed: June 16, 1999

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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 Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of June 21, 1999-June 27, 1999 is 18% for Consumer[1]/ Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of June 21, 1999-June 27, 1999 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9903552
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 15, 1999

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Texas Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from Syntex Credit Union (Houston) seeking approval to merge with Associated Credit Union (Deer Park) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

TRD-9903595
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: June 16, 1999

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Applications to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application for a name change was received for Dallas S.P. Employees Credit Union, Dallas, Texas. The proposed new name is Dallas U.P. Employees Credit Union.

An application for a name change was received for Memorial Credit Union, Houston, Texas. The proposed new name is Memorial Hermann Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

TRD-9903594
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: June 16, 1999

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from Employees Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit the employees of Aramark Corporation who work in or are paid from Dallas, Texas to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas to expand its field of membership. The proposal would permit the employees, including contract employees, of Brazosport Memorial Hospital, Lake Jackson, Texas to be eligible for membership in the credit union.

An application was received from Gulf Employees Credit Union, Groves, Texas to expand its field of membership. The proposal would permit the employees and members of Cornerstone Church, Winnie, Texas to be eligible for membership in the credit union.

An application was received from Cameron Credit Union, Houston, Texas to expand its field of membership. The proposal would permit the employees of Pritchard Industries Southwest, Inc. who are paid out of Houston, Texas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

TRD-9903593
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: June 16, 1999

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Texas Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership

First Energy Credit Union, Houston, Texas–See *Texas Register* issue dated March 26, 1999 (24 TexReg 2523)

Top O'TEC Credit Union, Amarillo, Texas–See *Texas Register* issue dated March 26, 1999 (24 TexReg 2523)

BUE Credit Union, Waco, Texas–See *Texas Register* issue dated March 26, 1999 (24 TexReg 2523)

Applications for a Merger or Consolidation

WESCO Federal Credit Union and Presbyterian Healthcare System Credit Union–See *Texas Register* issue dated March 26, 1999 (24 TexReg 2524)

Red Arrow-American Credit Union and St. Joseph's Credit Union–See *Texas Register* issue dated April 30, 1999 (24 TexReg 3369)

TRD-9903597
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: June 16, 1999

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Deep East Texas Workforce Development Board

Request for Proposal

The Deep East Texas Local Workforce Development Board, Inc. is seeking a qualified entity or entities to provide management and operation of the Deep East Texas Workforce Centers, conduct Job Search and Job Readiness services, and Rapid Response services in the 12-county Deep East Texas region. Proposers may choose to bid on all services or any single or combination of services. In any case, separate proposals must be prepared for each service.

The objectives of these services are to develop a workforce development system that will match jobs with people through a partnership between education, labor, the public and the private sectors in an accountable, efficient, and effective manner. The workforce area is composed of Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, and Tyler counties.

Request for Proposals (RFP) release date: 8:00 a.m., Thursday, June 10, 1999

A bidders conference will be held at 2:00 p.m., June 29, 1999 at the Angelina County Chamber of Commerce Meeting Room, 1615 South Chestnut; Lufkin, Texas, 75901. Attendance at the conference is not

required, however, technical assistance will be limited to information at the bidders' conference.

Eligible proposers are responsible for having the knowledge of all applicable laws, rules, and regulations governing these programs. Eligible proposers include private non-profit, private for-profit, and public entities. The Board encourages faith-based organizations and women and minority-owned businesses to apply.

Deadline for submission of proposals: 5:00 p.m. CDT, Friday, July 23, 1999

Requests for copies of the RFP can be made to:

Chris Gaston, Staff Services Officer

Deep East Texas Local Workforce Development Board, Inc.

1318 South John Redditt Drive

Lufkin, Texas 75904

(409) 639-8898

FAX: (409) 633-7491

Email: chris.gaston@twc.state.tx.us

TRD-9903438
Harry Green
Executive Director
Deep East Texas Workforce Development Board
Filed: June 10, 1999

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Texas Education Agency

Request for Proposals Concerning State Engineering and Science Recruitment (SENSR) Fund

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals authorized by the Texas Education Code, Title 3, Subtitle A, Chapter 51, Subchapter M, Engineering and Science Recruitment Fund, under Request for Proposals (RFP) #701-99-017 from organizations that qualify for exemption from federal income tax under the Internal Revenue Code, Title 26, Subtitle A, Chapter 1, Subchapter F, Part I, §501(c)(3), and that do not distribute net earnings to any private shareholder or other individual. The organizations must serve groups of women or minority group members who, considering their percentages of the Texas population, are under-represented at institutions of higher education in programs of engineering and applied sciences.

Description. The objective of this project is to allocate funds to eligible organizations to establish or operate educational programs. The programs will support the recruitment of women and members of ethnic minority groups to assist them in preparing for, or participating in, programs leading to undergraduate degrees in engineering or science from institutions of higher education. Funding also shall be used to disseminate information concerning career opportunities in engineering and science, as well as information about these programs that are funded under the requirements of the legislative authority noted previously.

Dates of Project. The State Engineering and Science Recruitment (SENSR) Fund project will be implemented during school year 1999-2000. Proposers should plan for a starting date of no earlier than September 1, 1999, and an ending date of no later than August 31, 2000.

Project Amount. For fiscal year 1999-2000, this project will distribute a total amount of approximately $394,920 subject to the availability of funds and approval of the commissioner of education. Funding will be provided to eligible nonprofit, tax-exempt organizations receiving contributions from other sources. For any one program, funds provided under this RFP may not exceed $25,000 or 50% of the contributions received by the program in the preceding fiscal year, whichever is less. Initial funding to eligible organizations shall be allocated in proportion to the percentage of women and under-represented minority students or teachers participating in eligible programs. After all grants have been awarded, funds may be allocated to establish or continue to operate eligible programs that have not received any contributions. The total amount budgeted by the contracting project organization for administration may not exceed 11% of the total amount budgeted for all selected programs sponsored by that organization. Any money remaining on January 1 of each year may be allocated to a funded organization in proportion to each organization's calculated share as previously prescribed. Contributions are defined as gifts, grants, donations, and market value of in-kind contributions from public and private entities, including the federal government, but excluding state appropriations.

Subsequent project funding will be based on satisfactory progress of the first year's objectives and activities and/or general budget approval by the State Board of Education, the commissioner of education, and the state legislature.

Selection Criteria. Proposals will first be considered based on the ability of each proposer to satisfy all requirements contained in the RFP. Preference shall be given to programs that stress the development of mathematical and scientific competence. Programs in the social sciences (e.g., psychology, sociology, etc.) will not be considered. TEA reserves the right to select from the highest-ranking proposals those that would serve the most participants who are women and under-represented minority group members in the objectives specified. Other program quality indicators are specified throughout the RFP. To be approved for funding, programs offered by eligible organizations must meet certain guidelines. Each program must: (1) use professional volunteers at each level of instruction; (2) require parental involvement; (3) coordinate with public school preparation for scientific and mathematics careers; (4) coordinate with secondary educational institutions, involve organizations of women and minority group members, and provide demonstrated professional leadership in educational activities for women and minority group members; and (5) be compatible with state and federal laws governing education.

TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A copy of the complete RFP may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, or by calling (512) 463-9304. Please refer to RFP #701-99-017 in your request.

Further Information. For clarifying information about this request, contact Walter Tillman, Program Administrator V, Office of Continuing Education and School Improvement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9322.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the Texas Education Agency no later

than 5:00 p.m. (Central Time), Wednesday, August 4, 1999, to be considered.

TRD-9903591
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: June 16, 1999

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Request for Statement of Interest Concerning Innovative Educational Technology Pilots

Eligible Participants. The Texas Education Agency (TEA) is requesting statements of interest under Request for Statement of Interest (RFSOI) #701-99-018 from private companies, regional education service centers, non-profit organizations and institutions of higher education to participate in the design, implementation and administration of pilot programs that will explore the impact of delivering curriculum content via various technologies. Historically underutilized businesses (HUBs) are encouraged to submit a statement of interest.

Description. The purpose of this project is to design, implement and administer pilot programs that will explore the impact of delivering curriculum content via various technologies. The project has been designed to link vendors with participating school districts. The selected vendors will be expected to provide technology and/or instructional content, staff development and evaluation support to participating school districts. Pilot evaluations will include both surveys and on-site visitations to assess changes in access to curriculum content, technology, implementation of the changes, student performance, and impact on instruction in the classroom.

The pilots will be grouped into four major technology categories as follows:

(1) Laptop Computer Pilots–These pilots will examine the use of laptop computers in delivering curriculum to elementary, middle, and high school students.

(2) Enhanced Video Distance Learning Pilots–These pilots will use two-way video and audio to deliver instructional content to elementary, middle, and high school students.

(3) Internet Access Pilots–These pilots will examine the use of limited functionality devices such as "thin clients," set top boxes and other tools for delivering instruction.

(4) Innovation Pilots–TEA will also solicit statement of interests from vendors and districts that use innovative devices and/or use other devices in a significantly innovative way.

The pilots will explore the effectiveness of technologies "to deliver curriculum and improve student learning." In Texas, effective curriculum is defined in terms of the Texas Essential Knowledge and Skills (TEKS), which identify what every student should know and be able to do at each grade level and in each subject area. This project has defined, for each technology and grade span (elementary, middle and high school), foundation content areas in which curriculum content must be provided. Curriculum content provided in these foundation areas must meet the same standards as nonconforming instructional materials, although preference will be given to pilots that include electronic curricula that meet the same standards as conforming instructional materials in the foundation content areas indicated.

Dates of Project. All services and activities related to this statement of interest will be conducted within specified dates. Participants should plan for a starting date of no earlier than October 1, 1999, and an ending date of no later than May 31, 2001.

Project Amount. No funds will be provided to entities submitting a statement of interest. Funds will be provided to participating school districts for various purposes.

Selection Criteria. Entities will be selected based on their ability to carry out all requirements contained in this RFSOI. TEA will base its selection on, among other things, the demonstrated competence and qualifications of the entity. TEA reserves the right to select from the highest-ranking statements of interest those that address all requirements in the RFSOI and that are most advantageous to the project.

TEA is not obligated to execute a resulting contract, provide funds, or endorse any statement of interest submitted in response to this RFSOI. This RFSOI does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFSOI does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Statement of Interest. A complete copy of RFSOI #701-99-018 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, or by calling (512) 463-9304. Please refer to the RFSOI number in your request. The RFSOI can also be viewed at: www.tea.state.tx.us/technology/pilots.

Further Information. For clarifying information about this RFSOI, please contact Robert Leos, Division of Textbook Administration, Texas Education Agency, (512) 463-9601.

Deadline for Receipt of Statements of Interest. Statements of Interest must be received in the Document Control Center of TEA by 5:00 p.m. (Central Time), Tuesday, July 27, 1999, to be considered.

TRD-9903590
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: June 16, 1999

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General Services Commission

Summary of Other State Bidder Preference Laws

The General Services Commission publishes this list of other state bidder preference laws in accordance with Texas Codes Annotated, Government Code, Title 10, §2252.003, which requires the publication of a list of states which have laws or regulations regarding the award of contracts for general construction, improvements, services, or public works projects or purchases of supplies, materials, or equipment to nonresident bidders, together with a citation to and summary of the most recent law or regulation of each state relating to the evaluation of bids from and award of contracts to nonresident bidders.

ALABAMA:

Code of Alabama, Title 21, §21-2-2 (1998) - Preference for products made or manufactured by the blind, visually handicapped, deaf or severely handicapped through the Alabama Institute for the Deaf and Blind. Preference is not applied over articles produced or manufactured by convicts in Alabama employed in industries operated or supervised by the board of corrections.

Code of Alabama, Title 39, §39-3-1 (1998) - Preference in contracts for public works projects financed entirely by the State of Alabama to stipulate in the contract or cause to be stipulated a provision whereby the person, firm or corporation undertaking the project agrees to use materials, supplies, and products manufactured, mined, processed or otherwise produced in the United States or its territories.

Code of Alabama, Title 39, §39-3-5 (1998) - Preference to resident contractors in tie bids for public contracts in which any state county or municipal funds are utilized.

Reciprocal preference is applied to nonresident contractors in the letting of public contracts. A nonresident contractor is defined in §39-2-12 as a contractor who is neither organized and existing under the laws of the State of Alabama, nor maintains its principal place of business in the State of Alabama.

Code of Alabama, Title 41, §§41-16-27 and 41-16-57 (1998) - Preference in tie bids for commodities produced in Alabama or sold by Alabama persons, firms, or corporations in the purchase of or contract for personal property or contractual services.

ALASKA:

Alaska Statutes, §36.15.010 (1999) - Preference for use of only timber, lumber and manufactured lumber products originating in Alaska from local forests to be used in projects financed by state money.

Alaska Statutes, §36.15.050 (1999) - A 7% preference for agricultural products harvested in the state of Alaska and for fisheries products harvested or processed within the jurisdiction of the State of Alaska when purchased by the state or by a school district that receives state money.

Alaska Statutes, §36.30.170 (1999) - "Alaska bidder" is defined as a person who holds a current Alaska business license; submits a bid for goods, services or construction under the name in the Alaska business license; maintains a place of business within the state; is incorporated or qualified to do business under the laws of the State of Alaska; is a sole proprietorship and the proprietor is a resident of the State of Alaska, or is a partnership and all partners are residents of Alaska; and if it is a joint venture, that it is composed entirely of ventures that meet the preceding qualifications.

Section 36.30.170(b) - Awards a contract to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent, an Alaska products preference as described in §§36.30.322-36.30.328, and a recycled products preference under §36.30.337 have been applied.

Section 36.30.170(c) - Award to an Alaska bidder who is not more than 15% higher than the lowest bid when Alaska bidder offers services through an employment program. "Program" means the state training and employment program established in Alaska Statutes, §§23.15.620 -23.15.660

Section 36.30.170(d) - An Alaska bidder preference of 5% for insurance related contracts.

Section 36.30.170(f) - An Alaska bidder preference of 10% if at least 50% of bidder's employees at time of the bid are persons with a disability.

Alaska Statutes, §36.30.322 (1999) - Preference for timber, lumber and manufactured lumber products originating in the state of Alaska forests to be procured by an agency or used in construction projects of an agency.

Alaska Statutes, §36.30.324 (1999) - Preference for use of Alaska products and recycled Alaska products in procurements for an agency.

Alaska Statutes, §36.30.328 (1999) - Definitions: "recycled Alaska product" means an Alaskan product of which not less than 50% of the value of the product consists of a product that was previously used in another product, if the recycling process is done in the State of Alaska. "Alaska product" means a product of which not less than 25% of the value has been added by manufacturing or production in the State of Alaska.

Alaska Statutes, §36.30.332 (1999) - Preference for the following Alaska products: Preference of 3% for Class I products that are more than 25% and less than 50% produced or manufactured in the State of Alaska. Preference of 5% for Class II products that are 50% or more and less than 75% produced or manufactured in the State of Alaska. Preference of 7% for Class III products that are 75% produced or manufactured in the State of Alaska.

Alaska Statutes, §36.30.337 (1999) - Preference of 5% for recycled products.

Title 2, Alaska Administrative Code, §12.260(e) (1999) - If a numerical rating system is used, an Alaska offeror's preference of at least 10% of the total possible value of the rating system is assigned to a proposal from an Alaska bidder.

ARIZONA:

Arizona Revised Statutes Annotated, Title 34, §34-242 (1998) - Preference of 5% for bidders who furnish materials produced or manufactured in the State of Arizona to construct a building or structure, or additions to or alterations of existing buildings or structures to any political subdivision of the State of Arizona. Bidders cannot claim a preference pursuant to both §34-242 and §34-243 and may not receive more than 5% total preference.

Arizona Revised Statutes Annotated, Title 34, §34-243 (1998) - Preference of 5% to bidders who furnish materials supplied by a dealer who is a resident of the State of Arizona to construct a building or structure, or additions to or alterations of existing buildings or structures for any political subdivision of Arizona.

Arizona Revised Statutes Annotated, Title 41, §41-2533 (1998) - Preference of 5% to the bidder of recycled paper product.

Arizona Administrative Code, Title 2, Chapter 7, §R2-7-335 (1998) - When practical, purchases that cost less than $10,000 shall be restricted to small businesses. Impractical purchases are under the following circumstances: Sole-source procurements as defined in A.R.S., §41-2536; emergency procurement as defined in A.R.S., §41-2537; purchases not expected to exceed $1,000; purchases delegated within a purchasing agency to field offices; and purchases that have been unsuccessfully completed by failure to contain a notice that only small businesses respond, or because the procurement officer has failed to request confirmation that a bidder contacted to offer a quote is a small business.

ARKANSAS:

Arkansas Code Annotated, §19-11-259 (1997) - Preference of 5% to a firm resident in Arkansas in the purchase of commodities that are materials and equipment used in public works projects.

Arkansas Code Annotated, §19-11-260 (1997) - Preference of 10% for recycled paper products. An additional 1% preference is allowed for products containing the largest amount of postconsumer materials recovered within the State of Arkansas. A bidder receiving a preference under this section shall not be entitled to an additional preference under §19-11-259.

Arkansas Code Annotated, §19-11-304 (1997) - Priority for bids submitted by private industries located within the State of Arkansas and employing Arkansas taxpayers over bids submitted by out-of-state penal institutions employing convict labor.

Arkansas Code Annotated, §19-11-305 (1997) - Preference of 5% as provided for in §19-11-259 to Arkansas bidder against bids received from private industries located outside the State of Arkansas; and a preference of 15% to Arkansas bidder against out-of-state correctional institution bids.

CALIFORNIA:

California Government Code, Title 1, Chapter 4, §4331 (1999) – Preference for supplies grown manufactured, or produced in the State of California, and next preference for supplies partially manufactured, grown or produced in the State of California. NOTE: Although §4331 has not been repealed, it was found to be unconstitutional by the California Attorney General. See 53 Ops. California Attorney General 72, 73 (1970).

California Government Code, Title 1, Chapter 4, §4334 (1999) – Preference of 5% to bidders manufacturing in the State of California supplies to be used or purchased in the letting of contracts for public works, with the construction of public bridges, buildings and other structures, or with the purchase of supplies for any public use. NOTE: Although §4334 has not been repealed, it was found to be unconstitutional by the California Attorney General. See 53 Ops. California Attorney General 72, 73 (1970).

California Government Code, Title 1, Chapter 10.5, §4533 (1999) – Contracts for goods in distressed areas. Preference of 5% in contracts for goods in excess of $100,000 given to California based companies that have at least 50% of the labor hours required to manufacture the goods and perform the contract performed at a worksite or worksites located in a distressed area.

California Government Code, Title 1, Chapter 10.5, §4533.1 (1999) – Additional preference awarded to bidders for contracts of goods in excess of $100,000 and who comply with §4533 are as follows: 1% preference for bidders who agree to hire persons with high risk of unemployment equal to 5% to 9% of its work force during the period of contract performance; a 2% preference for bidders who agree to hire persons with high risk of unemployment equal to 10% to 14% of its work force during the period of contract performance; a 3% preference for bidders who agree to hire persons with high risk of unemployment equal to 15% to 19% of its workforce during the period of contract performance.

California Government Code, Title 1, Chapter 10.5, §4534 (1999) – Preference of 5% in contracts for services in excess of $100,000 given to California based companies that have no less than 50% of the labor required for the contract performed at a worksite or worksites located in a distressed area.

California Government Code, Title 1, Chapter 10.5, §4534.1 (1999)– Additional preferences as set forth in §4533.1 are awarded to bidders for contracts of services in excess of $100,000 who comply with provisions as set forth in §4534.

California Government Code, Title 1, Chapter 10.5, §4535.2 (1999) – "The maximum preference and incentive a bidder may be awarded under Chapter 10.5, the Target Area Contract Preference Act, is 15% and is not to exceed a cost preference of $50,000. The combined cost of preferences and incentives granted pursuant to Chapter 10.5 and any other provision of law is not to exceed $100,000.

California Public Contract Code, §6107 (1999) – Reciprocal preference to a California company applied when awarding contracts for construction. If the California company is eligible for a California small business preference described in §14838, the preference applied is the greater of the two, but not both.

California Government Code, Chapter 12.8, §7084 (1999) – Contracts for goods in enterprise zones. Preference of 5% in contracts for goods in excess of $100,000 to California based companies who certify that not less than 50% of the labor hours required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

Additional preferences to California-based companies complying with this section during the performance of the contract are as follows: 5% preference given when not less than 90% of the labor hours required to perform the contract for goods is accomplished at a worksite or worksites located in an enterprise zone. 1% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 5% to 9% of its workforce. Two percent preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 10% to 14% of its work force. Three percent preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 15% to 19% of its workforce. Four percent preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 20 or more percent of its workforce during the period of the contract performance.

The maximum preference awarded to a bidder under the California Government Code, Chapter 12.8, Enterprise Zone Act, is 15%, and the maximum preference cost cannot exceed $50,000.00.

California Government Code, Title 1, Chapter 12.97, §7118 (1999) - A preference of 5% is awarded to California-based companies in contracts for goods in excess of $100,000 if no less than 50% of the labor required to perform the contract is accomplished at a worksite or worksites located in a local agency military base recovery area (LAMBRA).

A preference of 5% is awarded to California-based companies in contracts for services in excess of $100,000 who perform the contract at a worksite or worksites located in a LAMBRA.

Additional preferences are awarded to California-based companies complying with this section as follows: A 1% preference for bidders who shall agree to hire persons living within a LAMBRA; a 2% preference for bidders who agree to hire persons living within a LAMBRA that is equal to 10% to 14% of its work force during the period of contract performance; a 3% preference for bidders who agree to hire persons living within a LAMBRA that is equal to 15% to 19% of its work force during the contract performance; and a 4% preference for bidders who hire persons living within a LAMBRA that is equal to 20 percent or more of its work force during the contract performance.

The maximum preference a bidder may be awarded under Chapter 12.97, Local Agency Military Base Recovery Area Act, is 15% and the maximum preference cost cannot exceed $50,000.00.

California Public Contract Code, Chapter 2.5, §10860 (1999) - Under Chapter 2.5, California State University Contract Law, recycled paper product contracts are awarded to the bidder with the greater percentage of postconsumer material.

California Public Contract Code, Chapter 4, §12162 (1999) - All state agencies are to give a price preference, not to exceed 10%, to recycled paper products.

California Public Contract Code, Chapter 4, §12168 (1999) - The combined dollar amount of preference granted by public agencies

for the purchase of recycled paper is not to exceed $100,000. The recycled paper bidder preference shall not exceed $50,000 if a preference exceeding that amount would preclude a small business that offers nonrecycled paper products and is qualified under the California Government Code, §14838.

California Public Contract Code, Chapter 4, §12183 (1999) - A preference exists for compost and co-compost products when they can be substituted for, and cost no more than, the cost of regular fertilizer or soil amendment products, or both.

California Code Annotated, §14838 (1992) - Small businesses - Preference of 5% for resident small businesses. The maximum small business preference shall not exceed $50,000 for any bid and the combined cost for preferences granted by law shall not exceed $100,000.

COLORADO:

Colorado Revised Statutes Annotated, §8-18-101 (1998) - Reciprocal preference applied in favor of resident bidders for contracts of commodities and services.

Colorado Revised Statutes Annotated, §8-19-101 (1998) - Reciprocal preference applied in favor of resident bidders for construction contracts.

Colorado Revised Statutes Annotated, §8-19.5-101 (1998) - Preference of 5% in a public project contract to a bidder who has used no less than 10% recycled plastics in the manufacture of commodity or supplies. "Public project" means any publicly funded contract entered into by a governmental body of the executive branch of the State of Colorado that is subject to the Procurement Code, articles 101 to 112 of Title 24, Colorado Revised Statutes.

Colorado Revised Statutes Annotated, §24-30-1203 (1998) - Preference to purchase products and services from nonprofit agencies for persons with severe disabilities.

Colorado Revised Statutes Annotated, §24-30-202.5 (1998) - Preference for resident bidder in "low tie bids" for award of a supply contract. "Low tie bids" means low responsible bids from bidders that are identical in amount and that meet all the requirements and criteria set forth in the invitation for bids. (C.R.S. §24-103-101)

CONNECTICUT:

Connecticut General Statutes, §10-298b (1997) - Preference for products made or manufactured or services provided by blind persons under the direction or supervision of the Board of Education and Services for the Blind. Preference does not apply to articles produced or manufactured by the Department of Correction Industries in the State of Connecticut.

Connecticut General Statutes, §18-88 (1997) - Preference for each state department, agency, commission or board to purchase its necessary products and services from the Correctional Institutions and Department of Correction Industries, provided they are comparable in price and quality and in sufficient quantity as may be available outside the institutions.

DELAWARE:

Delaware Code, Title 16, §9605 (1998) - Preference for a product or service of the Delaware Industries for the Blind

Delaware Code, Title 29, §6962 (1998 - Preference for Delaware laborers, workers or mechanics in the construction of all public works for the State of Delaware or any political subdivision, or by firms contracting with the State or any political subdivision thereof.

DISTRICT OF COLUMBIA:

District of Columbia Code, Title 1, §1-1183.1 (1998) - Preference for the purchase of materials, equipment, and supplies produced in the District government or sold by District-based businesses.

FLORIDA:

Florida Statutes, Title XVIII, §255.04 (1998) - Preference in tie bids awarded to materialmen, contractors, builders, architects, and laborers who reside in Florida for the purchase of material and in contracts for the erecting or construction of any public administrative or institutional building.

Florida Statutes, Title XIX, §283.32 (1998) - Preference for each agency to use recycled paper. A preference of 10% to bidders who certify that the materials used for a printing contract contain at least the minimum percentage of recycled content established by the Department of Management Services.

Florida Statutes, Title XIX, §283.35 (1998) - Preference in tie bids for printing contracts awarded to bidders located within the State of Florida.

Florida Statutes, Title XIX, §287.045 (1998) - Preference of 10% to responsive bidder who has certified that the products or materials contain at least the minimum percentage of recycled content and post consumer recovered material and up to an additional five percent preference to a responsible bidder who has certified that the products or material are made of materials recovered in Florida.

Florida Statutes, Title XIX, §287.082 (1998) - Preference in tie bids for commodities manufactured, grown, or produced in the State of Florida.

Florida Statutes, Title XIX, §287.084 (1998) - Preference to a bidder whose principal place of business is in the State of Florida for the purchase of personal property through competitive bidding.

Florida Statutes, Title XIX, §287.087 (1998) - Preference to a business that has implemented a drug-free workplace program in the procurement of commodities or contractual services by the state or any political subdivision.

"Commodity" means any of the various supplies, materials, goods, merchandise, food, equipment, and other personal property, including a mobile home, trailer, or other portable structure with floor space of less than 3,000 square feet, purchased, leased, or otherwise contracted for by the state and its agencies. "Commodity" also includes interest on deferred-payment commodity contracts. However, commodities purchased for resale are excluded from this definition. Further, a prescribed drug, medical supply, or device required by a licensed health care provider as a part of providing health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration for clients at the time the service is provided is not considered to be a "commodity." Printing of publications shall be considered a commodity when competitively bid.

Florida Statutes, Title XXIX, §403.714 (1998) - Preference for the procurement of compost products applies to all state agencies, the Department of Transportation, the Department of Management Services and local governments, when the compost products can be substituted for, and cost no more than, regular soil amendment products. The preference applies, but is not limited to, the construction of highway projects, road rights-of-way, highway planting projects, recultivation and erosion control programs, and other projects.

Florida Statutes, Title XXIX, §403.753 (1998) - Applies a 5% preference in the procurement of recycled automotive, industrial and

fuel oils, and oils blended with recycled oils for all state and local government uses.

Florida Administrative Code, Title 60, §60E-1.005 (1999) - Priority to purchase any commodity or service from workshops for the blind or workshops for severely handicapped persons.

GEORGIA:

Georgia Code, Title 30, §30-2-4 (1998) - All departments, subdivisions, and institutions of the State of Georgia are directed to give preference in purchases of goods manufactured at the Georgia Industries for the Blind.

Georgia Code Annotated, §50-5-60 (1998) - Preference in tie bids in the purchase and contracting of supplies, materials, equipment manufactured and printing produced in Georgia. Preference in all cases shall be given to surplus products or articles manufactured or produced by other state departments, institutions, or agencies.

Reciprocal preference applied in favor of vendors resident in the State of Georgia or Georgia businesses.

Georgia Code Annotated, §50-5-60.4 (1998) - Preference given to Georgia compost and mulch to use in road building, land maintenance, and land development activities.

Georgia Code Annotated, §50-5-61 (1998) - Preference in tie bids for supplies, materials, agricultural products and printing produced in Georgia.

HAWAII:

Hawaii Revised Statutes, Title 9, §103-22.1 (1998) - When a governmental agency contracts for or purchases services, 5% preference shall be given to services to be performed by nonprofit corporations or public agencies operating sheltered workshops servicing the handicapped in conformance with criteria established by the department of labor and industrial relations.

Hawaii Revised Statutes, Title 9, §103D-1002 (1998)Preference of 3% for Class I Hawaii products that have 25% to 49% of their manufactured cost in Hawaii; preference of 5% for Class II Hawaii products that have 50% to 74% of their manufactured cost in Hawaii; and a preference of 10% for Class III Hawaii products that have 75% or more of their manufactured cost in Hawaii. Hawaii products means products that are mined, excavated, produced, manufactured, raised, or grown in the state where the input constitutes no less than 25% of the manufactured cost. (H.R.S., §103D-1001)

Hawaii Revised Statutes, Title 9, §103D-1003 (1998) reference of 15% to contracts performed in the State of Hawaii for printing, binding or stationery, including all preparatory work, presswork, bindery work, and any other production-related work.

Hawaii Revised Statutes, Title 9, §103D-1003 (1998)– Reciprocal preference may be applied by the chief procurement officer against bidders from those states which apply preferences.

Hawaii Revised Statutes, Title 9, §103D-1004 (1998) - Reciprocal preference against bidders from those states which apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the non-resident preference exceeds any preference applied by the State of Hawaii.

Hawaii Revised Statutes, Title 9, §103D-1005 (1998) - Preference given to products containing recycled material. Purchase specifications shall include but not be limited to paper, paper products, glass and glass-by-products, plastic products, mulch and soil amendments, tires, batteries, oil, paving materials and base, subbase, and pervious backfill materials.

Weils Code of Hawaii Rules, Title 3, Chapter 124, §3-124-24(a) (1999) Preference of 5% given to recycled products only when purchase does not specify only recycled products and when non-recycled products are offered.

Hawaii Revised Statutes, §103D-1006 (1998) - Preference in tie bids given to Hawaii software development businesses.

Weils Code of Hawaii Rules, Title 3, Chapter 124, §3-124-34(a) (1999) - Price preference of 10% applied to Hawaii software development businesses.

Weils Code of Hawaii Rules, Title 3, Chapter 124, §3-124-31 (1999) - Definitions. "Hawaii software development business" means any person, agency, corporation, or other business entity with its principal place of business or ancillary headquarters located in the State of Hawaii and which proposes to obtain 80% of the labor for software development from persons domiciled in Hawaii.

Weils Code of Hawaii Rules, Title 3, Chapter 124, §3-124-25(e) (1999) - After all preferences are applied to recycled products, and the price comparison, after taking into consideration all applicable preferences, results in identical evaluated prices, award shall be made to the offeror offering the product with the higher post-consumer recovered material content; or the product with the higher recovered material content if the products have identical post-consumer recovered material content.

Hawaii Revised Statutes, Title 9, §103D-1007 (1998) - Preference of 7% on bids for public works project contracts given to a bidder who has filed all state tax returns due to the State of Hawaii and paid all amounts owing on such returns for two successive years prior to submitting the bid and if the amount of the bid is $5,000,000.00 or less; and a preference of 7% to a bidder who has filed all state tax returns due to the State of Hawaii and paid all amounts owing on such returns for four successive years prior to submitting the bid and the amount of the bid is more than $5,000,000.00.

Weil's Code of Hawaii Rules, Title 3, Chapter 124, §3-124-44(a) (1999) - Preference of 7% for in-state contractors bidding on public works contracts.

IDAHO:

Idaho Code, Title 60, §60-101 (1998) – Preference for all printing, binding, engraving and stationery work to be executed within the State of Idaho, except as provided in §60-103 of the Idaho Code.

Idaho Code, Title 60, §60-103 (1998) - Preference of 10% awarded to a person, firm or corporation proposing to execute printing, engraving, binding, and stationery work in the State of Idaho.

Idaho Code, Title 67, §67-2348 (1998) - Reciprocal preference applied in favor of Idaho domiciled contractors on public works contracts.

Idaho Code, Title 67, §67-2349 (1998) – Reciprocal preference in favor of suppliers domiciled in Idaho for the purchase of any materials, supplies, services or equipment. Any bidder domiciled outside the boundaries of the State of Idaho may be considered an Idaho domiciled bidder provided that for a period of the year the bidder maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and if a corporation be registered and licensed to do business in the Sate of Idaho.

Idaho Code, Title 67, §67-5718 (1998) - Preference in tie bids for property purchased in excess of $25,000.00 or procured at $1,000.00 per month to be given to bidders having property of local and

domestic production and manufacture, or bidders having a significant Idaho economic presence as defined in the Idaho Code.

ILLINOIS:

Illinois Compiled Statutes Annotated, 30 ILCS §500/45-60 (1999) - Preference to award contract for vehicles to a bidder or offerer who will fulfill the contract through the use of vehicles powered by ethanol produced from Illinois corn or biodiesel fuels produced from Illinois soybeans.

Illinois Compiled Statute Annotated, 30 ILCS §500/45-30 (1999) - Preference given to certain articles, materials, industry related services, food stuffs, and supplies that are produced or manufactured in institutions and facilities of the Illinois Department of Corrections.

Illinois Compiled Statute Annotated, 30 ILCS §500/45-35 (1999) - Preference to procure, without advertising or bids, supplies and services from Illinois Sheltered workshops for the severely handicapped.

Illinois Compiled Statutes Annotated, 30 ILCS §520/2 (1999) - Preference given to vendors in those states whose preference laws do not prohibit the purchase by the public institutions of commodities grown or produced in Illinois. Applies to all Illinois state agencies. The term "institution" means all institutions maintained by the State of Illinois or any political subdivision thereof or municipal corporation therein, including municipally-owned public utility plants. (30 ILCS §520/1)

Illinois Compiled Statutes Annotated, 30 ILCS §505/6 (1999) Reciprocal preference for public contracts; 10% preference for using products made from recycled materials in public contracts.

Illinois Compiled Statutes Annotated, 30 ILCS §555/1 (1999) - Every institution in the State of Illinois is required to give a 10% preference to the cost of coal mined in the State of Illinois if used as fuel. The term "institution" means all institutions maintained by the State of Illinois or any political subdivision thereof or municipal corporation therein, including municipally-owned public utility plants. (30 ILCS §555/2)

Illinois Compiled Statutes Annotated, 30 ILCS §565/2 (1999) - Preference for steel products produced in the United States in all contracts for construction, reconstruction, repair, improvement or maintenance of public works. "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. (30 ILCS §565/3)

llinois Administrative Code, Title 44, Chapter X, §1120.4510 (1998)- Preference for Illinois resident vendor in tie bids. An Illinois resident vendor who would perform the services or provide the supplies from another state, or produces or performs at least 51% of the goods or services in another state, will be considered a resident of the other state as against an Illinois resident vendor who performs the services or provides the supplies from Illinois. Reciprocal preference is applied against vendors considered residents of another state if the state has an in-state preference.

INDIANA:

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-16 (1998) - Preference of 10% for supplies in which 50 percent of volume of the original component of supplies consists of recycled materials, or the cost of purchasing recycled materials equals at least 50% of cost of producing supplies

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-17 (1998) - Preference of 15% for supplies that contain at least 50% by volume of recycled materials that have been used by an ultimate consumer of the materials.

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-18 (1998) - Preference of 10% for soybean oil based ink.

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-19(1998) Preference of 10% for the purchase of fuel that is at least 20% soy diesel/bio diesel by volume. "Soy diesel/bio diesel" includes fuels (other than alcohol) that are primarily esters derived from biological materials, including oil seeds and animal fats, for use in compression and ignition engines.

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-20-(1998) - Preference for Indiana businesses and reciprocal preference applied in favor of Indiana businesses.

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-22 (1998) - Preference applied for coal mined in Indiana when purchasing coal for fuel. The preference does not apply if federal law requires the use of low sulphur coal in the circumstances for which the coal is purchased and does not apply to the Indiana State Lottery Commission.

IOWA:

Code of Iowa, Title 1, Chapter 18, §18.6 (1997) - Preference in tie bids for Iowa products and purchases from Iowa based businesses, and reciprocal preference with states that mandate a percentage preference for the purchase of equipment, supplies, or services.

Code of Iowa, Title II, Chapter 73, §73.6 (1997) - Preference for the purchase of coal that is mined or produced within the State of Iowa by producers who are complying with all the workers' compensation and mining laws of the state.

Code of Iowa, Title II, Chapter 73, §73A.21 (1997) - Reciprocal preference for public improvement contracts.

KANSAS:

Kansas Statutes Annotated, §75-3740 (1997) - Preference in tie bids awarded to bidder within the State of Kansas. In bids for paper products, preference is given to the bidder whose paper products contain the highest percentage of recyclable materials. Reciprocal preference is applied in awarding of any contract for construction of a building or the making of repairs or improvements upon any building for a state agency.

Kansas Statutes Annotated, §75-3740a (1997) - Reciprocal preference in favor of Kansas bidder or business on all governmental contracts.

Kansas Statutes Annotated, §75-3740b (1997) - Preference to bidder for newsprint or high grade bleached printing or writing paper containing not less than 50% waste paper by weight.

KENTUCKY:

Kentucky Revised Statutes, Title VII, §56.005 (1998) - Preference for composted materials collected at Kentucky state and local facilities, to be used by state agencies for projects including, but not limited to, roadway construction, reconstruction, or maintenance, restoration of sites including abandoned mine lands reclamation, stream bank stabilization, and reforestation.

Kentucky Revised Statutes, Title VI, §45A.470 (1998) - Preference for all governmental bodies and political subdivisions of the State of Kentucky to purchase commodities or services from the Kentucky

Department of Corrections. Second preference given to the Kentucky Industries for the blind.

Kentucky Revised Statutes, Title VI, §45A.520 (1998) - Preference for recycled materials. State agencies are required to provide minimum recycled material content equal to those established by the United States Environmental Protection Agency for purchasing goods, supplies, equipment, materials, and printing.

Kentucky Revised Statutes, Title XVII, §197.210 (1998) - Preference to purchase products made by Kentucky prison industries.

LOUISIANA:

Louisiana Revised Statutes, Title 30, §30:2415 (1998) - Preference for state agencies in Louisiana to purchase recycled paper and paper products, tissue and paper towels. "Recycled paper product" means all paper and woodpulp products which contain the recommended minimum content standards specified in the guidelines as adopted by the Environmental Protection Agency under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. 6901 et seq.), as amended, and which are specified in the rules and regulations promulgated by the secretary of the Department of Environmental Quality pursuant to R.S. 30:2415.4, except that high grade bleach printing and writing papers defined in such guidelines, rules, and regulations shall contain a minimum of 50% recovered paper or 20% recovered post-consumer fiber by fiber weight.

Louisiana Revised Statutes, Title 30, §30:2417 (1998) - When purchasing lubricating oils, a purchasing agent for any agency, of the State of Louisiana is to give preference of 5% to rerefined oil which meets manufacturer's warranty, and the product of which contains at least twenty - 5% rerefined oil.

Louisiana Revised Statutes, Title 38, §38:2184 (1998) - Preference given to supplies material, or equipment produced or offered by Louisiana citizens.

Louisiana Revised Statutes , Title 38, §38:2225 (1998) - Reciprocal preference against nonresident contractors in public works contracts.

Louisiana Revised Statutes, Title 38,§38:2251 (1998) – 7% preference for products assembled, processed, produced or manufactured in Louisiana. Four percent preference for processed meat, meat products, domesticated catfish and produce grown outside of the State of Louisiana, but processed in the State of Louisiana.

Louisiana Revised Statutes, Title 38, §38:2251.1 (1998) – 10% preference for milk and dairy products produced or processed in Louisiana.

Louisiana Revised Statutes, Title 38, §38:2251.2 (1998) – 10% preference for steel rolled in Louisiana.

Louisiana Revised Statutes, Title 38, §38:2253 (1998) – Preference in tie bids to firms doing business in the State of Louisiana.

Louisiana Revised Statutes, Title 39, §39:1595 (1998) - Preference of 7% for products produced, grown or harvested in Louisiana; preference of 4% for meat and meat products and domesticated catfish processed in Louisiana.

Louisiana Revised Statutes, Title 39, §39:1595.1 (1998) - Reciprocal preference for all contracts except highway construction.

Louisiana Revised Statutes, Title 39, §39:1595.2 (1998) - Reciprocal preference in public works contracts.

Louisiana Revised Statutes, Title 39, §39:1595.3 (1998) - 5% preference for resident vendors to organize or administer rodeos and livestock shows.

Louisiana Revised Statutes, Title 39, §39:1595.5 (1998) - Reciprocal preference for items purchased from Louisiana retailers.

Louisiana Revised Statutes, Title 39, §39:1595.6 (1998) - 10% preference for steel rolled in Louisiana.

Louisiana Revised Statutes, Title 39, §39:1733 (1998) - Set aside for awarding to small businesses an amount not to exceed 10% of the value of anticipated total state procurement of goods and services, excluding construction.

MAINE:

Maine Revised Statutes Annotated Title 5, §1812-B (1997) - Preference of 10% to bidders offering paper or paper products with recycled materials.

Maine Revised Statutes Annotated, Title 5, §1825 (1997) - Preference in tie bids to award contracts to in-state bidders or to bidders offering commodities produced or manufacutred in the State of Maine. Reciprocal preference applied in favor of Maine businesses.

Maine Revised Statutes Annotated, Title 5, §1826-C (1997) - Preference for products and services from work centers. Second preference given to purchases from the Department of Corrections if no bid is received from a work center. "Work center" means a rehabilitation facility or that part of a rehabilitation facility engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilitation process. (M.R.S., Title 5, §1826-A)

Maine Revised Statutes Annotated Title 26, §1301 (1997) - Preference in tie bids awarded to workmen and bidders who are residents of the State of Maine for contracts that are greater than $1,000 for constructing, altering, repairing, furnishing or equipping its buildings or public works.

MARYLAND:

Annotated Code of Maryland, Article 24, Title 8, §8-102 (1998) - Preference in tie bids awarded to a Maryland firm. "Maryland firm" means a business entitity that has its principal office in the State of Maryland.

Annotated Code of Maryland, State Finance and Procurement Code, §14-206 (1998) - Up to a 5% preference applied to a small business. Percentage preference may vary among industries to account for their particular characteristics. "Small business" preference means a purchase request for which bids are invited from a list of qualified bidders that includes small businesses. (Md. State Finance and Procurement Code, §14-201)

Annotated Code of Maryland, State Finance and Procurement Code, §14-401 (1998) - Reciprocal preference for resident bidders in procurement contracts.

Annotated Code of Maryland, State Finance and Procurement Code, §14-404 (1998) - Preference for the use of Maryland coal in the design of a heating system for a building or facility in which the State of Maryland provides at least 50% of the money for construction of the building or facility.

Annotated Code of Maryland, State Finance and Procurement Code, §14-405 (1998) - Preference, not to exceed 5%, for the purchase of products made from recycled materials. "Recycled materials" means material recovered from or otherwise destined for the waste stream. Recycled materials includes post-consumer material, industrial scrap material, compost and obsolete inventories.

MASSACHUSETTS:

Massachusetts General Laws Annotated, Chapter 149, §179A (1999) – Preference in tie bids to U.S. citizens in awarding of public work contracts.

Massachusetts General Laws Annotated, Chapter 7, §22 (1999) - Preference in tie bids for supplies and materials manufactured and sold within the State of Massachusetts. An additional preference may be applied for supplies and materials manufactured and sold in cities and towns of Massachusetts that are designated as depressed areas as defined by the Department of Labor of the United States.

MICHIGAN:

Michigan Statutes Annotated, Title 3, §3.516(261) (1999) - Preference to Michigan based firms in tie bids for services or manufactured products.

Michigan Statutes Annotated, Title 3, §3.516(268) (1999) - Reciprocal preference in favor of Michigan business applied in procurements in excess of $100,000.

Michigan Statutes Annotated, Title 3, §3.405(6) (1999) - Preference in tie bids for the purchase of fish harvested in the waters of the State of Michigan.

Michigan Statutes Annotated, Title 4, §4.315 (1999) - Printing paid wholly or in part with state funds must be printed within the State of Michigan. Firms must use the allied printing trades council union label.

MINNESOTA:

Minnesota Statutes Annotated, §16B.122, Subd. 3 (1998) - Preference of 10% for the purchase of recycled materials.

Minnesota Statutes, Annotated, §16C.16 (1998) - Set-aside of at least 25% of total state procurement of goods and services, including printing and construction to be awarded to small businesses. Small businesses are to have their principal place of business in Minnesota.

A preference of up to six percent is to be applied to small targeted group businesses. Small targeted group businesses are majority owned and operated by women, persons with a substantial physical disability, or specific minority groups.

MISSISSIPPI:

Mississippi Code 1972 Annotated, §19-13-111 (1998) - Preference in tie bids given to resident bidders of the State of Mississippi in contracts for stationery and office supplies and blank books.

Mississippi Code 1972 Annotated, §31-3-21 (1998) - Preference in tie bids given to resident bidders of the State of Mississippi for public contracts; and reciprocal preference when awarding to out-of-state bidders for public contracts.

Mississippi Code 1972 Annotated, §31-7-15 (1998) - Preference in tie bids given to resident bidders of the State of Mississippi for commodities grown, processed or manufactured within the State of Mississippi. Preference of 10% for products made of recovered materials. "Recovered materials" means those materials having known recycling potential, which can be feasibly recycled and have been diverted or removed from the waste stream for sale, use or reuse, by separation, collection or processing. (Miss. Code Ann. § 49-31-9)

Mississippi Code 1972 Annotated, §31-7-47 (1998) - Preference in tie bids given to resident bidders of the State of Mississippi in the letting of public contracts, and reciprocal preference when awarding public contracts to out-of-state bidders.

Mississippi Code 1972 Annotated, §73-13-45 (1998) - Preference in tie bids given to resident contractors of the State of Mississippi for professional engineering services; and reciprocal preference when awarding to out-of-state contractors for professional engineering services.

MISSOURI:

Missouri Revised Statutes, Title II, §8.280 (1999) - Preference to use products from the mines, forests, and quarries of the State of Missouri with the construction or repair of public buildings.

Missouri Revised Statutes, Title IV, §34.031 (1999) - Preference in tie bids for the purchase of products made from materials recovered from solid waste. Particular emphasis is given to recycled oil, retread tires, compost materials, and recycled paper products.

The minimum percentage of recycled paper in paper products is as follows: Forty percent recovered materials for newsprint, eighty percent recovered materials for paperboard; 50% waste paper in high grade printing and writing paper; and five to forty percent in tissue products.

Missouri Revised Statutes, Title IV, §34.060 (1999) - Preference to be given to materials, products, supplies, provisions, and all other articles produced or manufactured, made or grown within the State of Missouri.

Missouri Revised Statutes, Title IV, § 34.070 (1999) - Preference in tie bids to all commodities manufactured, mined, produced or grown within the state of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals.

Missouri Revised Statutes, Title IV, §34.073 (1999) - Preference in tie bids for the performance of any job or service given to bidders doing business as Missouri firms, corporations or individuals, or which maintain Missouri offices or places of business.

Missouri Revised Statutes, Title IV, §34.076 (1999) - Reciprocal preference awarded to a bidder or contractor domiciled in Missouri for products and for public works contracts, except for contracts for highways and public transportation.

Missouri Revised Statutes, Title IV, §34.080 (1999) - Preference in tie bids for the purchase of coal mined in the State of Missouri to be used by any institution supported in whole or in part by public funds of the state. Institutions do not include municipal corporations, political subdivisions or public schools.

Missouri Revised Statutes, Title IV, §34.165 (1999) - Preference of five bonus points awarded for products or services manufactured, produced or assembled in qualified nonprofit organizations for the blind.

MONTANA:

Montana Code Annotated, §18-1-102 (1998) - Reciprocal preference in favor of Montana businesses for public contracts for construction, repair, or public works. Preference of 3% for purchases of goods from a resident bidder; and a preference of 5% to resident bidders for goods or products produced in Montana. Combined preference shall not exceed 5%. The word "resident" includes actual residence of an individual within the state of Montana for a period of more than 1 year immediately prior to bidding.

Montana Code Annotated, §18-1-111 (1998) - Preference in tie bids to resident bidder, and preference in tie bids for articles of local and domestic production and manufacture.

Montana Code Annotated, §18-1-111 (1998) - Preference in tie bids for Montana-made goods in all contracts.

Montana Code Annotated, §18-7-107 (1998) - Preference of 8 percent to resident bidder for all printing, binding and stationery work that is printed in the State of Montana.

NEBRASKA:

Nebraska Revised Statutes, §73-101.01 (1999) - Reciprocal preference in favor of Nebraska business in the letting of a public contract.

Nebraska Revised Statutes, §81-15-159 (1999) - Preference to purchase products, materials and supplies which are manufactured or produced from recycled material or which can be ready reused or recycled after their normal use. Preference to purchase corn-based biodegradable plastics and road deicers when available, suitable, of adequate quality, unless at a substantially higher cost.

NEVADA:

Nevada Revised Statutes, Title 27, §333.300 (1999) - Preference in tie bids to Nevada businesses for the purchase of supplies, materials and equipment; preference in tie bids with nonresident bidders awarded to bidder who will furnish goods or commodities produced or manufactured in the State of Nevada, or to the bidder who will furnish goods or commodities supplied by a dealer in the State of Nevada.

Nevada Revised Statutes, Title 27, §333.4606 (1999) - Preference for recycled products in tie bids for the purchase of goods and products; preference of 5% to recycled products over comparable nonrecycled products in the purchase of goods and products; preference of 10% to a bidder who manufactures a product in Nevada in which at least 50% of the weight of the product is post-consumer waste (a finished material which would normally be disposed of as a solid waste having completed its life cycle as a consumer item).

Nevada Revised Statutes, Title 27, §333.4609 (1999) - Preference in tie bids for the purchase recycled paper products.

NEW HAMPSHIRE:

New Hampshire Revised Statutes, Title I, §21-1:14-a (1999) - Printing and writing paper purchased by or for state agencies is to contain not less than 30 percent post consumer waste material.

NEW JERSEY:

New Jersey Statutes Annotated, §13:1E-99.24 (1999) - Preference given to the purchase of products made from recycled paper or recycled paper products with the highest percentage of post-consumer waste material.

New Jersey Statutes Annotated, §13:1E-99.25 (1999) - Preference of 10% for the purchase of items which are manufactured or produced from recycled paper or recycled paper products. Up to a 15 percent preference may be for recycled paper or recycled paper products when it is determined to be in the best interest of the State of New Jersey.

New Jersey Statutes Annotated, §13:1E-99.27 (1999) - Not less than 65% of the total dollar amount of paper or paper products purchased by the State is to be made from recycled paper or recycled paper products having a total weight consisting of not less than 50% secondary waste paper material and with not less than 25% of its total weight consisting of post-consumer waste material; except that high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, mimeo paper and duplicator paper is to be made from recycled paper having a total weight consisting of not less than 50% secondary waste paper material and with not less than 15% of its total weight consisting of post-consumer waste material.

New Jersey Statutes Annotated, §13:1E-99.27a (1999) - Preference of 15% for nonpaper finished products or supplies made from recycled material.

New Jersey Statutes Annotated, §52:32-1 (1999) - Preference to use manufactured and farm products of the United States in all contracts for state work which the state pays any part of the cost.

New Jersey Statutes Annotated, §52:32-1.4 (1999) - Reciprocal preference in contracts for goods and services.

New Jersey Statutes Annotated, §52:34-23 (1999) The Division of Purchase and Property in the State of New Jersey to give preference for the purchase of items which are made whole or in part from recycled materials.

NEW MEXICO:

New Mexico Statutes Annotated, §13-1-21 (1998) - Preference of 5% to resident businesses and manufacturers; preference of 5% to resident manufacturers and resident businesses for the purchase of recycled content goods or virgin content goods; preference of 10% to resident manufacturers and resident business for the purchase of both recycled content goods and virgin content goods.

"Resident business" means a New Mexico resident business or a New York state business enterprise.

"New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state.

New Mexico Statutes Annotated, §13-4-1 (1998) - Whenever practicable award is to be made to a resident contractor for public works contracts or for the repair, reconstruction, including highway reconstruction, demolition or alteration thereof.

New Mexico Statutes Annotated, §13-4-2 (1998) - Preference of 5% to resident contractors for public works contracts. "Resident contractor" means a New Mexico resident business or a New York state business enterprise.

New Mexico Statutes Annotated, §13-4-5 (1998) - Preference to be given to materials produced, grown, processed or manufactured in New Mexico by citizens or residents of New Mexico or provided or offered by a New York state business enterprise in contracting for materials to be used in the construction or maintenance of public works.

New Mexico Statutes Annotated, §63-9F-6 (1998) - Preference of 5% awarded to any business that qualifies as a resident business for a telecommunications relay system that will enable impaired individuals to communicate with unimpaired individuals.

NEW YORK:

New York Consolidated Law, State Finance Law, Article 11, § 162 (1998) [Expires and repealed June 30, 2000] - Certain providers are given exemption from competitive procurement statutes in the State of New York. The exemption applies to commodities produced, manufactured or assembled, including those repackaged to meet the form, function and utility required by state agencies in New York State. Preferred status is accorded to commodities produced by the Department of Correctional services' correctional industries program; commodities and services by qualified charitable non-profit-making agency for the blind, special employment programs serving mentally

ill persons, and severely disabled people; and commodities and services produced by a qualified veterans' workshop.

Consolidated Law of New York, State Finance Law, Article XI, §165.3.a (1998) - Preference of 10% for recycled products (a product manufactured from secondary materials). Preference of 15% for products in which 50% of the secondary materials utilized in the manufacture of the product are generated from the waste stream in New York State. "Secondary materials" means any material recovered from or otherwise destined for the waste stream, including, but not limited to post-consumer material, industrial scrap material and overstock or obsolete inventories from distributors, wholesalers and other companies. It does not include by-products generated from and commonly reused within an original manufacturing process. (Article XI, § 165.1)

State Finance Law, Article XI, §165.4.a to .b (1998) - Preference in the letting of contracts for food products grown, produced or harvested in the State of New York, or in facilities located in the State of New York. The Commissioner of General Services assisted by the Commissioner of Agriculture and Markets will determine the percentage of each food product or class which must meet the requirements.

State Finance Law, Article XI, §165.6.a to .e (1998) - Office of General Services may deny to a vendor placement on bidders mailing lists and award of contracts that they would otherwise obtain if their principal place of business is located in a state that penalizes New York State vendors, and if the goods or services offered will be substantially produced or performed outside New York State.

NORTH CAROLINA:

General Statutes of North Carolina, §143-59 (1999) - Preference in tie bids for foods, supplies, materials, equipment, printing or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina.

General Statutes of North Carolina, §148-70 (1999) - Preference for purchasing articles, products and commodities which are manufactured or produced by North Carolina's Department of Corrections prison system.

NORTH DAKOTA:

North Dakota Century Code, §44-08-01 (1999) - Reciprocal preference, in favor for North Dakota business for the purchase of any goods, merchandise, supplies, equipment, and contracting to build or repair any building, structure, road, or other real property.

North Dakota Century Code, §46-02-15 (1999) - Preference when practicable for all public printing, binding and blank book manufacturing, blanks, and other printed stationery, to be done in the State of North Dakota.

North Dakota Century Code, §48-02-10 (1999) - Preference in tie bids to purchase materials manufactured or produced within the State of North Dakota, and second, to purchase such as have been manufactured or produced in part in North Dakota for making alterations, repairs, additions, or erecting new public buildings.

North Dakota Century Code, §48-02-10.2 (1999) - Preference in tie bids for furnishing materials, products and supplies which are found, produced, or manufactured within the State of North Dakota from native natural resources.

OHIO:

Ohio Revised Code Annotated Title 1, §125.09 (1998) - Preference for United States and Ohio products. Vendors from border states that do not impose greater restrictions on Ohio bidders are treated as Ohio bidders.

Ohio Revised Code Annotated Title 1, §125.11 (1998) - Department of Administrative Services, prior to awarding a contract, will first remove from bids goods or supplies that are not produced or mined in the United States. From among the remaining bids, preference to be given to bidders with goods or supplies produced or mined in Ohio.

Ohio Revised Code Annotated Title 1, §125.56 (1998) - All printing to be executed within the State of Ohio except for printing contracts requiring special, security paper. Preference of 5% to Ohio bidders in printing contracts requiring special, security paper.

Ohio Revised Code Annotated Title 1, §153.012 (1998) - Reciprocal preference in favor of contractors who have their principal place of business in Ohio, for construction, public improvement, including highway improvement, contracts.

OKLAHOMA:

Oklahoma Statutes 1991 Title 61. §51 (1998) - Preference for goods and equipment manufactured or produced in the United States.

Oklahoma Statutes 1991 Title 74, § 85.17 (1998) - Reciprocal preference applied to out-of-state bidders.

Oklahoma Statutes 1991 Title 74, §85.45c (1998) - A maximum of 5% bid preference is given to minority business enterprises if amount of funds expended on state contracts awarded to minority business enterprises is less than 10%.

Oklahoma Statutes 1991 Title 74, §85.53 (1998) - Preference to purchase from suppliers of recycled paper products and products manufactured from recycled materials.

OREGON:

Oregon Revised Statutes, §279.021 (1997) - Preference for goods or services that have been manufactured or produced in the State of Oregon.

Oregon Revised Statutes, §279.029 (1997) - Reciprocal preference in favor of Oregon businesses for public contracts. A resident bidder is a bidder who has paid unemployment taxes or income taxes in the State of Oregon for one year immediately preceding submission of the bid.

Oregon Revised Statutes, §279.570 (1997) - Preference of 5% for materials and supplies manufactured from recycled materials. "Recycled material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled. (O.R.S. §279.545)

Oregon Revised Statutes, §279.590 (1997) - Preference of 5% to bidder whose oil products contain the greater percentage of recycled oil. "Recycled oil" means oil that has been prepared for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing or other means provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations. (O.R.S. §279.580)

Oregon Revised Statutes, §279.621 (1997) - Preference of 12% to bidder or suppliers of recycled paper.

Oregon Revised Statutes, §282.210 (1997) - All printing, binding and stationery work for the state and political subdivisions to be performed in the State of Oregon

PENNSYLVANIA:

Pennsylvania Statutes Annotated, Title 71, §639 (1998) - Preference for goods of American production or manufacture in contracts for stationery, paper, fuel, repairs, furnishings and supplies.

Pennsylvania Statutes Annotated, Title 71, §671 (1998) - Preference in tie bids for aluminum and steel products made in the United States.

Pennsylvania Statutes Annotated, Title 73, §1645.3 (1998) - Reciprocal preference for goods, supplies, equipment, printing, and material in purchases exceeding the amount of $1,500.

Pennsylvania Statutes Annotated, Title 73, §1645.4 (1998) - Reciprocal preference in public contracts exceeding the amount of $1,500.

Pennsylvania Statutes Annotated, Title 53, §4000.1505 (1998) - Preference of 5% to bidder who certifies the minimum percentage of recycled content set forth in the invitation for bids for goods, supplies, equipment, materials and printing.

RHODE ISLAND:

General Laws of Rhode Island, §21-4.1-8 (1998) - Preference of 0.25% or one quarter of 1% given to any Rhode Island milk processor or distributor.

General Laws of Rhode Island, §37-2.2-3 (1998) - Preference for the state to purchase articles made or manufactured and services provided by persons with disabilities in nonprofit rehabilitation facilities, or in profit making facilities where 75% of the employees are disabled.

General Laws of Rhode Island, §37-2-59.1 (1998) - Preference in tie bids for professional contracts entirely supported by state funds to be awarded to architectural, engineering, and consulting firms with their place of business located in Rhode Island. Second preference in tie bids awarded to architectural, engineering, and consulting firms who propose a joint venture with a Rhode Island firm.

SOUTH CAROLINA:

Code Of Laws Of South Carolina Annotated, Title 11, Article 5, §11-35-1520 (1998) - Preference in tie bids for contracts amounting to $25,000 or more to be awarded first to a South Carolina firm; secondly to the bidder with South Carolina produced or manufactured products. Additional preferences are applied to ties among South Carolina firms.

Code Of Laws Of South Carolina Annotated, Title 11, Article 5, §11-35-1524 (1998) - Preference of 7% provided to residents of South Carolina or whose products are made, manufactured, or grown in South Carolina. An addition 3% preference is awarded to a bidder who is both a resident of South Carolina and whose products are made, manufactured, or grown in South Carolina.

Code Of Laws Of South Carolina Annotated, Title 12, Article 13, §12-27-30 (1998) - Set-asides of 5% to small business for state source highway funds expended for direct contracts for highway, bridge, and building construction and building renovation contracts with estimated values of $250,000 or less. Small businesses are to be owed and controlled by socially and economically disadvantaged ethnic minorities and disadvantaged females.

Preference of 2.5% (two and one-half percent) awarded to South Carolina contractors in tie bids for highway, bridge, and building construction and building renovation contracts.

Code Of Laws Of South Carolina Annotated, Article 4, § 19-446.1000 (1998) - Preference for end products which are made, manufactured, or grown in South Carolina if available. If the same or substantially similar end-products are not available in South Carolina, then procure the same or substantially similar end-products which are made, manufactured or grown in other states of the United States, before the same or substantially similar foreign-made manufactured or grown end-products may be procured.

Preference does not apply to procurement of construction, a contractor providing materials or services relating to permanent improvements to real estate, or when the price of a single unit involved is more than $10,000.

"End-product" is the item sought by a governmental body of the State of South Carolina and described in the solicitation including all component parts and in final form and ready for the use intended by the governmental body.

"Grown" means to produce, cultivate, raise or harvest, timber, agricultural produce, or livestock, on the land, or to cultivate, raise, catch, or harvest products or food from the water which results in an end product.

Code Of Laws Of South Carolina Annotated, Title 44, Article 1, §44-96-20 (1998) - Preference in state procurement policies to products with recycled contents.

SOUTH DAKOTA:

South Dakota Codified Laws Annotated, §5-19-1 (1999) - Preference for materials, products and supplies which are found, produced or manufactured within the State of South Dakota.

South Dakota Codified Laws Annotated, §5-19-3 (1999) - Reciprocal preference in favor of South Dakota businesses in contracts for public works or improvement, goods, merchandise, supplies, and equipment. Resident bidder is any person who has been a bona fide resident of the State of Dakota for one year or more immediately prior to bidding upon a contract. (S.D. Codified Laws, § 5-19-4).

South Dakota Codified Laws Annotated, §5-23-13 (1999) - Preference in tie bids to any person, firm, or corporation who has his or its principal place of business in the State of South Dakota and to goods manufactured in South Dakota.

South Dakota Codified Laws Annotated, §5-23-21.2 (1999) - Reciprocal preference applied on contracts.

South Dakota Codified Laws Annotated, §5-23-45 (1999) - Preference of 10% applied to bids supplying recycled or starch-based materials.

TENNESSEE:

Tennessee Code Annotated, §12-3-808 (1999) Preference in tie bids to purchase goods or services from small businesses and minority owned businesses.

Tennessee Code Annotated, §12-3-809 (1999) - Preference in tie bids to in-state meat producers by departments and agencies.

Tennessee Code Annotated, §12-3-811 (1999) - Preference in tie bids to in-state coal mining companies.

Tennessee Code Annotated, §12-3-812 (1999) - Preference in tie bids to in-state natural gas producers.

Tennessee Code Annotated, §12-4-802 (1999) - Reciprocal preference allowed to residents of Tennessee, and residents of another state that do not have a preference in public construction contracts against another state that is contiguous to Tennessee and allows a preference to a resident contractor of that state.

Tennessee Code Annotated, §71-4-703 (1999) - Preference to purchase all services or commodities that are available and certified by the Board of Standards from qualified nonprofit work centers for the blind or agencies serving individuals with severe disabilities.

TEXAS:

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.442 (1999) - Preference in tie bids given to bidders with energy efficient products.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.443 (1999) - Preference to bidders of rubberized asphalt paving made from scrap tires by a facility located in the State of Texas if the cost as determined by a life-cycle cost benefit analysis does not exceed by more than 15% the bid cost of alternative paving materials.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.444 (1999)- Preference in tie bids for goods and agricultural products produced or grown in Texas, or offered by Texas bidders, that are of equal cost and quality to other states of the United States. Preference in tie bids for goods and agricultural products from other states of the United States over foreign goods and agricultural products that are of equal cost and quality.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.445 (1999) Preference for recycled products if product meets State of Texas specifications regarding quantity and quality.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.446 (1999) - Preference for paper containing the highest proportion of recycled fibers..

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.447 (1999) - Preference for motor oil and automotive lubricants that contain at least 25% recycled oil if cost to the State of Texas and quality are comparable to those of new oil and lubricants.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2171.052 (1999) - Preference given to resident entities of the State of Texas for contracts with travel agents.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2252.002 (1999) - Reciprocal preference in favor of Texas businesses for all governmental contract.

UTAH:

Utah Code Annotated, §63-56-20.5 (1998) - Reciprocal preference in favor of Utah businesses for goods, supplies, equipment, materials and printing.

Utah Code Annotated, §63-56-20.6 (1998) - Reciprocal preference in favor of Utah businesses for construction contracts.

Utah Code Annotated, §63-56-20.7 (1998) - Preference of 5% for the purchase of recycled paper or paper products.

Utah Code Annotated, §63-56-35.8 (1998) - Preference for procurements from a sheltered workshop if products meet needs and specifications, can be supplied within a reasonable amount of time, and price is reasonably competitive. "Sheltered workshop" means a nonprofit organization operated in the interest of severely disabled individuals.

VERMONT: None

VIRGINIA:

Code of Virginia Annotated, 11-47 (1998) - Preference in tie bids given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations; reciprocal preference for the purchase of goods, services, and construction applied against other states having resident preferences; preference in tie bids occurring after existing price preferences taken into account awarded to bidder whose goods contain the greatest amount of recycled content.

Code of Virginia Annotated, 11-47.1 (1998) - Preference of four percent to bidder offering coal mined in Virginia.

Code of Virginia Annotated, 11-47.2 (1998) - Preference of 10% to bidder offering recycled paper and paper products.

WASHINGTON:

Revised Code of Washington, §39.04.133 (1999) - State's preference for the purchase and use of recycled content products in the design and development of state capital improvement projects.

Revised Code of Washington, §39.24.020 (1999) - Preference for fuel produced in State of Washington.

Revised Code of Washington, §43.19.535 (1999) - Preference to bidder providing goods or services to a state agency if goods or services are provided whole or in part by an inmate work program of the department of corrections; and an amount at least 15% of the total bid amount will be paid by the bidder to inmates as wages.

Revised Code of Washington, §43.19.538 (1999) - Preference in state purchasing for the purchase of products containing recycled material.

Revised Code of Washington, §43.19.700 (1999) - Reciprocity preference in favor of Washington businesses.

Washington Administrative Code, Chapter 236, §236-48-085 (1998) - In procuring goods and services, an appropriate percentage penalty will be added to an out-of-state bid by the Office of State Procurement, if the bidder's state has in-state preference clauses. States with only reciprocity will not be included.

Washington Administrative Code, Chapter 236, §236-48-096 (1998) - Preference of 10% for goods containing recovered material. The bidder must certify the minimum percent content of recovered material as set forth in the invitation to bid.

WEST VIRGINIA:

West Virginia Code Annotated, §5-19-2 (1999) - 20 percent domestic preference over foreign products involving public contracts over $5,000 or steel contracts involving over $50,000 or over 10,000 pounds; 30 percent preference if domestic production is in area determined by the U.S. Department of Labor to be a "substantial labor surplus area".

West Virginia Code Annotated, §5A-3-37 (1999) - In this section "resident bidder" means an individual who has resided in West Virginia continuously for four years, or a partnership, association, corporation resident vendor, or a corporation nonresident vendor that has an affiliate or subsidiary that employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia.

The following preferences are listed under §5A-3-37: Preference of 2.5% to resident bidders for construction contracts over $50,000; preference of 2.5% to resident bidders who employ at least 75% West Virginia residents; and preference of 2.5% to nonresident vendors who employ at least 100 residents and have at least 75% resident employees;

West Virginia Code Annotated, §5A-3-37a (1999) - Reciprocal preference in the purchase of commodities or printing except where the provisions of §5A-3-37 may apply.

West Virginia Code Annotated, §18B-5-4 (1999) - Preference for resident bidders in the purchase or acquisition of materials, supplies, equipment and printing by institutions of higher education.

West Virginia Code Annotated, §20-11-7 (1999) - Preference of 10% for recycled products. Priority given to paper products with highest post-consumer content.

WISCONSIN:

Wisconsin Statutes, §16.75(1)(a)(2) (1998) - Preference awarded to Wisconsin producers, distributors, suppliers and retailers, in the purchase of materials, supplies, equipment, and contractual services over non Wisconsin bidders who are from a state that grants a resident preference.

Wisconsin Statutes, §16.75(3m)(b) (1998) - Preference of 5% to minority businesses for the purchase of materials, supplies, equipment, and contractual services.

Wisconsin Statutes, §16.855(1) (1998) - Preference to resident bidders in construction projects against states that impose a resident preference.

Wisconsin Statutes, §16.855(10m)(a) (1998) - Preference of 5% to minority businesses in the letting of construction contracts.

Wisconsin Statutes, §44.57 (1998) - Preference to resident artists for works of art in state buildings.

WYOMING:

Wyoming Statutes Annotated, §9-2-1016(b)(iv)(G) (1999) - Preference of 5% given to a nonprivate sector bidder over a private sector bidder in awarding bids or contracts for supplies or services if competitive sealed bidding is required.

Wyoming Statutes Annotated, §16-6-102 (1999) - Preference of 5% given to a certified resident bidder in public works contracts for the erection, construction, alteration or repair of any public building, or other public structure, or for making any addition thereto, or for any public work or improvement. A successful resident bidder cannot subcontract more than twenty percent of the work covered by his contract to nonresident contractors (§16-6-103).

Wyoming Statutes Annotated, §16-6-105 (1999) .- Preference of 5% in public purchases for Wyoming materials, supplies, agricultural products, equipment and machinery manufactured or grown in the State of Wyoming.

"Agricultural product" means any horticultural, viticultural, vegetable product, livestock, livestock product, bees or honey, poultry or poultry product, sheep or wool product, timber or timber product.

Wyoming Statutes Annotated §16-6-301 (1997) - Preference of 10% given to resident bidders in public printing contracts.

For questions concerning the Bidder Preference List, please contact the General Services Commission, Office of General Counsel, at (512) 463-3960.

TRD-9903605
Judy Ponder
General Counsel
General Services Commission
Filed: June 17, 1999

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Texas Department of Health

Notice of Public Hearings Schedule for Development and Review of Block Grant Funds

Under the authority of the Preventive Health Amendments of 1992 (See 42 United States Code §§300w et.seq), the Texas Department of Health (department) is making application to the U.S. Public Health Service for funds to continue the Preventive Health and Health Services (PHHS) Block Grant during federal fiscal year (FFY) 2000. Provisions in the Act require the chief executive officer of each state to annually furnish a description (a state plan) of the intended use of block grant funds in advance of each FFY. A proposal of this description is to be made public within each state in such a manner as to facilitate comments.

The grant can be used to support virtually any public health activity. Language in the 1992 amendments allows block grant monies to be expended for activities consistent with making progress toward achieving the objectives established by the "year 2000 health objectives".

In FFY 1999, 17 activities are funded under the block grant. These include children and tobacco use prevention; sexual assault prevention and crisis services; public information; health promotion; minority health initiative; minority health initiative (low birth weights); language services; continuing nursing education; behavioral risk factor surveillance system; trauma registry; local health departments; regional emergency health care system; Texas drinking water fluoridation program; border environmental health; birth defects; adult and community health; and community-based primary care (put prevention into practice).

The PHHS Block Grant award for FFY 1999 was $6,113,334. This is a 1.2% decrease from 1998. Of this amount, $496,657 was required to be used for sexual assault prevention and crisis services.

The Crime Bill, which was enacted in FFY 1996, provides approximately $42.7 million for rape prevention education activities which will be divided among the states by population. Texas received $3,028,237 in FFY 1999. Although these monies are appropriated through the U.S. Department of Justice, the federal government has chosen to pass the funding to the states through the PHHS Block Grant award.

The department prepared the following schedule for the development and review of the FFY 2000 State Plan for the PHHS Block Grant. In July of 1999, the department will hold public hearings in four public health regions (PHRs):

July 12, 1999

Public Health Region 7, 1100 West 49th Street, Austin, Texas, 4:00 - 6:00 p.m.

July 13, 1999

Public Health Region 1, 1109 Kemper, Lubbock, Texas, 1:00 p.m.

July 13, 1999

Public Health Regions 4 and 5, 1517 West Front Street, Room 257, Tyler, Texas, 4:00 - 6:00 p.m.

July 13, 1999

Public Health Region 11, 601 West Sesame Drive, Harlingen, Texas, 3:00 p.m.

Following these hearings, the department will summarize and consider the impact of the public comments received. The department will then notify the public of the availability of a published summary of these hearings. In August of 1999, the department will prepare the final FFY 2000 State Plan for the PHHS Block Grant and forward it to the Governor and federal government.

Please note that the department will continuously conduct activities to inform recipients of the availability of services/benefits, the rules

and eligibility requirements, and complaint procedures. Written comments regarding the PHHS Block Grant may be submitted through July 30, 1999, to Philip Huang, M.D., Chief, Bureau of Disease and Injury Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. For further information, call (512) 458-7200.

TRD-9903525
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 14, 1999

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Texas Health and Human Services Commission

Request for Public Comment

The Health and Human Services Commission (HHSC) announces the availability for public comment three draft Requests for Proposal (RFP) for the following services: (1) production and direction of a statewide multi-media campaign to publicize the availability of health insurance to families of uninsured children through television, radio, and print for the Children's Health Insurance Program (CHIP); (2) delivery of comprehensive health insurance services for the CHIP; (3) delivery of comprehensive administrative services for the CHIP, as authorized by Title XXI of the Social Security Act.

The release of the draft RFPs does not constitute solicitation of offers or proposals by HHSC.

The draft RFPs are available on the HHSC website at http://www.hhsc.state.tx.us. Interested parties may also obtain copies of the draft RFPs at the offices of HHSC, 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas, 78751.

All questions and comments should be submitted in writing by 5:00 p.m., Central Time, July 12, 1999 to Suzanne VanderPoel, Children's Health Insurance Program, HHSC, 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas, 78751, 512-424-6568, FAX: 512-424-6585, or e-mail: suzanne.vanderpoel@hhsc.state.tx.us.

TRD-9903596
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 16, 1999

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Heart of Texas Council of Governments

Request for Proposals - Legal Notice

The Heart of Texas Council of Governments (COG) is accepting proposals for replacement of Public Safety Answering (PSAP) equipment for the counties of Limestone and Freestone. Proposals are due by July 16, 1999 at 5:00 p.m. Any proposal received after that time and date will not be considered.

For specifications, the Request for Proposals (RFP) is available from the Heart of Texas COG, 300 Franklin Avenue, Waco, Texas 76701 or by calling (254) 756-7822.

A Pre-Proposal Conference will be held on June 30, 1999. This meeting will begin at 10:00 a.m. and will be held at the offices of the Heart of Texas COG, 300 Franklin Avenue, Waco, Texas 76701.

The Heart of Texas COG's reserves the right to reject and an/or all proposals and to make awards as they may appear to be advantageous to the Heart of Texas Council of Governments.

TRD-9903608
Brenda Campbell
Executive Assistant
Heart of Texas Council of Governments
Filed: June 17, 1999

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Texas Department of Insurance

Notice of Public Hearing

The Commissioner of Insurance at a public hearing under Docket Number 2411 scheduled for July 27, 1999 at 9:00 a.m., in room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks adoption of amendments for residential property Endorsements, HO-190, Texas Homeowner Policy Sworn Statement In Proof Of Loss, and TDP-014, Texas Dwelling Policy Sworn Statement In Proof Of Loss. Staff's petition (Ref. Number P-0699-08-I), was filed on June 9, 1999.

The above-prescribed forms utilize pre-printing of the century so that the year can be completed by supplying the last two digits. These forms have places where dates are to be supplied and they use "19__."

Staff proposes to amend Endorsements HO-190 Texas Homeowners Policy Sworn Statement in Proof Of Loss and TDP-014 Texas Dwelling Policy Sworn Statement to delete "_____ ,19__" and replace with "_____ , ____." (Month) (Year)

A copy of the petition, including an exhibit with the full text of the proposed amendments to the endorsements is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. Number P-0699-08-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Division, Texas Department of Insurance, P. O. Box 149104, MC 104-5A. Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from requirement of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-9903531
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 14, 1999

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Texas Lottery Commission

Request for Proposals for Broadcast Production Services

The Texas Lottery Commission (the "Texas Lottery") is issuing a Request for Proposals for Broadcast Production Services ("the RFP"). The purpose of the RFP is to obtained proposals from qualified

vendors to provide television production and satellite transmission services for the Texas Lottery to broadcast live on-line game drawings (e.g., LOTTO, Pick3, Cash 5, and Texas Million).

The Texas Lottery is seeking proposals on televised broadcast production staffing and services for the televised live on-line game drawings at a production facility within a forty (40) mile radius of the Texas Lottery's headquarters located at 611 E. 6th Street, Austin, Texas 78701.

The term of any contract shall commence on the execution date of the contract and continue for one (1) year. This contract may be extended by the Texas Lottery for an additional one (1) year period at the sole discretion of the Texas Lottery.

Schedule of Events

The time schedule for awarding a contract under this RFP is shown below. The Texas Lottery reserves the right to amend the schedule.

June 16, 1999-Issuance of RFP

July 9, 1999-Letter of Intent to Propose Due (4:00 p.m. CT)

July 9, 1999-Written Questions Due (4:00 p.m. CT)

July 16, 1999-Answers to Written Questions Issued

July 26, 1999-DEADLINE FOR PROPOSALS (4:00 p.m. CT)

August 3, 1999-Announcement of Apparent Successful Proposer (or as soon as possible thereafter)

To obtain a copy of this RFP, please contact Kaye Schultz, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, telephone (512) 344-5050, or by facsimile at (512) 344-5189.

TRD-9903569
Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Filed: June 15, 1999

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Texas Department of Mental Health and Mental Retardation

Public Hearing Notice

Health and Human Services Commission and Texas Department of Mental Health and Mental Retardation Notice of Joint Public Hearing on Home and Community-Based Services (HCS) Rates and Mental Retardation Local Authority (MRLA) Rates.

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on proposed reimbursement rates for Home and Community-Based Services (HCS) effective September 1, 1999, through August 31, 2000, and Mental Retardation Local Authority (MRLA) effective September 1, 1999, through August 31, 2000. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Wednesday, July 7, at 9:00 a.m. in room 240 of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by noon on Wednesday, July 7, 1999. Interested parties may obtain a copy of the reimbursement briefing package 10 days prior to the hearing by calling the Reimbursement and Analysis Section at (512) 206-5753.

Persons requiring ADA accommodation should contact Tom Wooldridge by calling (512)206-5753, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tom Wooldridge through the Texas Relay operator by calling 1-800-735-2988.

TRD-9903598
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: June 16, 1999

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Texas Natural Resource Conservation Commission

Draft 1999 Update–State of Texas Water Quality Management Plan

The Texas Natural Resource Conservation Commission (TNRCC) announces the availability of the Draft May 1999 Update to the Water Quality Management Plan for the State of Texas.

The Water Quality Management Plan (WQMP) is developed and promulgated pursuant to the requirements of the federal Clean Water Act (CWA), §208. The Draft May 1999 WQMP Update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once TNRCC certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollution Discharge Elimination System (TPDES) permits, EPA approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by TNRCC.

A copy of the Draft May 1999 Update may be viewed on the TNRCC's web page at http://www.tnrcc.state.tx.us/water/quality/index.html, and at the TNRCC Central Office at 12015 North Interstate 35, Building A, Library.

A public hearing will be held on Monday, July 26, 1999, at 10:00 a.m., at the TNRCC offices, 12015 North Interstate 35, Austin, Building F, Room 5108.

Comments on the Draft May 1999 Update to the Water Quality Management Plan shall be provided in written form and sent to Suzanne Vargas, Texas Natural Resource Conservation Commission, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 239-4619. Comments may be faxed to (512) 239-4410, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., July 26, 1999. This deadline for comments will be extended to 5:00 p.m., August 9, 1999, if a member of the public submits a written request for such an extension which is received by Suzanne Vargas by 5:00 p.m., July 26, 1999. For further information contact Suzanne Vargas, Texas Natural Resource Conservation Commission, Water Quality Division, MC 150, (512) 239-4619, e-mail svargas@tnrcc.state.tx.us.

TRD-9903584
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 16, 1999

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes a Default Order 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 EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §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 **July 25, 1999**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC'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. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 25, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1) COMPANY: Carol Norra dba North Fork Mobile Home Park; DOCKET NUMBER: 1998-0594-PWS-E; TNRCC IDENTIFICATION (ID) NUMBER: 1011926; LOCATION: 205 Reidland Road, off Farm to Market 2100, north of Crosby, Harris County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(a) and (e)(2) and Texas Health and Safety Code (THSC), §341.033(d) by failing to collect and submit the appropriate number of water samples for bacteriological analysis and by failing to provide public notification of failure to collect bacteriological water samples for the months of August through December, 1997 and January through March, 1998; THSC, §341.041 by failing to pay the public health service fee for the year 1998; and 30 TAC §290.120(c)(3)(6) by failing to submit a sample site selection for lead/copper samples and by failing to collect and submit samples for lead/copper analysis; PENALTY: $4,969; STAFF ATTORNEY: Nathan Block, Litigation Division, MC 175, (512) 239-4706; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(2) COMPANY: Shaban Jannesari dba S. Mart Foods; DOCKET NUMBER: 1998-0935-PST-E; TNRCC ID NUMBER: 34848; LOCATION: 10510 South Post Oak, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3)(A) and THSC, §382.085(b) by failing to equip the Stage II vapor recovery system with California Air Resources Board certified components; PENALTY: $500; STAFF ATTORNEY: Heather C. Otten, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(3) COMPANY: Larry Williams dba Wilco Auto Repair; DOCKET NUMBER: 1998-0900-AIR-E; TNRCC ID NUMBER: GI-0215-L; LOCATION: 803 East Houston, Sherman, Grayson County, Texas; TYPE OF FACILITY: vehicle repair shop; RULES VIOLATED: 30 TAC §116.110 by operating the vehicle body repair shop without a permit, without satisfying the conditions of an exemption and by operating his vehicle body repair shop without a spray booth; PENALTY: $6,250; STAFF ATTORNEY: M. Camille Morris, Litigation Division, MC 175, (512) 239-3915; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

TRD-9903582
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 16, 1999

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC 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* not later than the 30th day before the date on which the public comment period closes, which in this case is **July 25, l999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold 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 TNRCC's Orders and permits issued pursuant to the TNRCC'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 of the proposed AOs is available for public inspection at both the TNRCC'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. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas, 78711-3087 and must be **received by 5:00 p.m. on July 25, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Naushad Virani dba Circle B One Stop; DOCKET NUMBER: 1998-0842-PWS-E; TNRCC IDENTIFICATION (ID)

NUMBER: 12497; LOCATION: Farm to Market Road 321 at Salem Road, Cleveland, Harris County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.51 and Texas Health and Safety Code (THSC), §341.04 by failing to pay public health service fees for the year 1997; 30 TAC §290.103(5) by failing to provide public notice for Virani's failure to conduct bacteriological sampling; and 30 TAC §290.105, §290.106, and THSC, §341.033(d) by failing to routinely collect and submit bacteriological samples and repeat fecal coliform samples for analysis; PENALTY: $600; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(2) Chevron USA Incorporated; Relative to the Port Arthur Refinery; DOCKET NUMBER: 1997-0404-IHW-E; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: This proposed Agreed Order would supplement a 1997 TNRCC Agreed Order, entitled In The Matter of Clark Refining and Marketing, Incorporated and Chevron U.S.A. Incorporated; Port Arthur Refinery; SWR Number 30004, Docket Number 1997-0404-IHW-E, by designating and authorizing the utilization of a Corrective Action Management Unit for the management and disposal of remediation wastes from the Port Arthur Refinery located at the end of West Seventh Street, Port Arthur, Jefferson County, Texas; PENALTY: $0; STAFF ATTORNEY: Mary Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas, 77703-1892, (409) 898-3838.

(3) COMPANY: John Cox; DOCKET NUMBER: 1998-1298-AIR-E; TNRCC ID NUMBER: GB-05250B; LOCATION: Lone Pine Subdivision, Santa Fe, Galveston County, Texas; TYPE OF FACILITY: commercial property development; RULES VIOLATED: 30 TAC §;111.201, 111.219(6)(A) and (7), 330.5, and THSC, §382.085(b) by conducting unauthorized outdoor burning of waste materials, including tires and by leaving burning unattended; PENALTY: $3,125; STAFF ATTORNEY: Heather Otten, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(4) COMPANY: Edwin Hempel; DOCKET NUMBER: 1998-0203-OSI-E; TNRCC ID NUMBER: 3527; LOCATION: Coryell County, Texas; TYPE OF FACILITY: on-site installer; RULE VIOLATED: 30 TAC §285.109 and THSC, §366.051(a) and (c) by altering, repairing, or extending an on-site sewage facility (OSSF) system without the owner or owner's representative showing proof of a permit and approved plan from an authorized agent; 30 TAC §285.103(a)(4) by constructing or installing an OSSF without a satisfactory completion of on-site inspections by an authorized agent; and 30 TAC §285.17(e) and THSC, §366.004 by installing, altering, repairing, or extending an OSSF that does not comply with THSC, Chapter 366 and applicable rules, including the installation of a standard OSSF where soil and/or size characteristics of the property excluded the use of a standard OSSF; PENALTY: $2,000; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas, 76710-7826, (254) 751-0335.

(5) COMPANY: TXI Operations, L.P.; DOCKET NUMBER: 1995-0663-AIR-E; TNRCC ID NUMBER: ED-0066-B; LOCATION: 245 Ward Road, Midlothian, Ellis County, Texas; TYPE OF FACILITY: cement manufacturing plant; RULES VIOLATED: The proposed Order would terminate a 1995 Agreed Order issued by the commission against TXI for violations of 30 TAC §101.4 and THSC, §382.085(a) and (b); PENALTY: $0; STAFF ATTORNEY: Lisa Uselton Dyar, Litigation Division, MC 175, (512) 239-5692; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

TRD-9903583
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 16, 1999

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Notice of Opportunity to Comment on Shutdown Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Shutdown Orders. Texas Water Code (the Code), §26.3475 authorizes the TNRCC to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The TNRCC staff proposes a shutdown order after the owner or operator of a underground storage tank facility fails by to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. Pursuant to the Code, §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 **July 25, l999**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Shutdown Order if a comment discloses facts or consideration that indicate that the consent to the proposed Shutdown Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Shutdown Order is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed Shutdown Orders is available for public inspection at both the TNRCC'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. Written comments about the Shutdown Order should be sent to the attorney designated for the Shutdown Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas, 78711-3087 and must be **received by 5:00 p.m. on July 25, l999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Shutdown Orders and/or the comment procedure at the listed phone numbers; however, comments on the Shutdown Orders should be submitted to the TNRCC in **writing**.

(1) FACILITY: Today's Store; OWNER: Mr. Huong Nguyen; DOCKET NUMBER: 1999-0317-PST-E; TNRCC IDENTIFICATION (ID) NUMBER: 48238; LOCATION: 401 North Third Street, Ganado, Jackson County, Texas; TYPE OF FACILITY: retail gasoline service station with USTs; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) by failing to provide proper release detection for the USTs at the facility; 30 TAC §334.51(b)(2)(B) and (C) by failing to provide proper spill containment and overfill prevention equipment for the USTs at the facility; and 30 TAC §334.49(a) by failing to provide proper corrosion protection for the USTs at the facility;

PENALTY: Shutdown order; STAFF ATTORNEY: John Peeler, Litigation Division, MC-175, (512) 239-3506; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas, 78412-5503, (512) 980-3100.

(2) COMPANY: Graham Food Market and Laundrymat, OWNER: The New Jats Corporation; DOCKET NUMBER: 1999-0276-PST-E; TNRCC ID NUMBER: 43157; LOCATION: 1801 South Highway 16, Graham, Young County, Texas; TYPE OF FACILITY: retail gasoline service station with USTs; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) by failing to provide proper release detection for the USTs at the facility; and 30 TAC §334.51(b)(2)(C) by failing to provide proper overfill prevention equipment for the USTs at the facility; PENALTY: Shutdown order; STAFF ATTORNEY: John Wright, Litigation Division, MC-175, (512) 239-2269; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas, 79602-7833, (915) 698-9674.

TRD-9903581
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 16, 1999

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Proposal for Decision

The State Office Administrative Hearing (SOAH) has issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission (TNRCC) on June 11, 1999 on Executive Director's Report and Petition Assessing Administrative Penalties and Requiring Certain Actions of Jerry Roberts dba Roberts Grocery and Station; SOAH Docket Number 582-99-0058; TNRCC Docket Number 98-0608-PST-E; In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 1118 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3315.

TRD-9903589
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: June 16, 1999

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Request for Proposals

The Texas Natural Resource Conservation Commission (TNRCC) and the State Energy Conservation Office (SECO) seek proposals for evaluation in response to a U.S. Department of Energy (DOE) Request for Proposals (RFP).

The program is National Industrial Competitiveness through Environment, Energy, and Economics (NICE^3), which advances U.S. competitiveness by commercial demonstration of energy efficient and clean production manufacturing and industrial technologies in industry. Proposals are hereby solicited by TNRCC and SECO for submission to DOE for cost- shared financial assistance to state and industry partnerships for projects which will yield new processes and/or equipment which can significantly reduce generation of high volume waste in industry and conserve energy and energy intensive feedstocks. The projects intend to provide U.S. consumers with high-quality, lower-cost goods and to overcome barriers that inhibit adoption of energy efficiency and cleaner production techniques in industry and state. This goal is accomplished by: funding the first commercial demonstration of an innovative manufacturing or industrial process, reporting successful test results of those demonstrations, conducting an industrial scale commercial demonstration to determine energy, environment, and economic impacts, and commercializing the technologies/processes throughout applicable industries.

Qualified proposals will be submitted to DOE by the TNRCC and SECO. If successful, industry/state awardees receive a one-time grant of up to $525,000 for the proposed project from DOE, with the industry partner receiving a maximum award of $500,000. Grants fund up to 50% of the total project cost for up to three years.

ELIGIBILITY CRITERIA

Industrial firms in conjunction with state agencies throughout the U.S. are eligible to apply to the NICE^3 grant program. Proposals are accepted for a variety of industrial applications that promote clean production and energy efficiency. Selection criteria will include how much the awards' funding will contribute to the project's feasibility and effectiveness. The proposals that meet the criteria identified by the DOE and benefit Texas industry will be forwarded to the DOE for the final decision. Emphasis will be placed on funding projects within the OIT focus industries: Agriculture, Aluminum, Chemicals, Forest Products, Glass, Metalcasting, Mining, Petroleum, and Steel.

The federal contribution of the NICE^3 award must be cost-shared with nonfederal funds with at least 50% of the total project cost. The use of federal funds for the 50% cost-match is prohibited. The following categories are **ineligible** for funding: waste disposal, remediation of sites, treatment or storage of wastes, cross-media contamination shifts, anything nuclear, municipal solid waste collection or separation, incineration for energy recovery, proof of concept research proposals, waste-tire utilization, technologies that are currently in use in the U.S. and abroad, and water recycling technologies without waste recovery and reuse.

APPLICATION FORMAT

The application shall consist of one volume in two parts: technical and cost/administrative information, including a title page. There should also be a detailed description of the demonstration project that addresses each of the evaluation criteria: technology/process description, statement of work, applicant capabilities, and commercialization/market potential. The application should be limited to ten pages of text or supplemental material not including the title page, industry letters of support, or required tables and forms. Limit the application narrative to 8 by 11 inch pages of typed text (no smaller than 12 point type, single spaced and no less than 1 inch margins). The narrative of the application should be presented in as much detail as is practical and necessary without exceeding the ten page limit. Excess pages will not be evaluated. **If the application does not follow the established format and the reviewers are unable to find the pertinent information, it may result in a lower evaluation.**

Additional application information including forms can be found at **http://www.eren.gov/golden/solicitations.html.** Only proposals which provide the information specified in the DOE solicitation will be considered for submission to DOE.

Complete information on the NICE^3 program can be found on the DOE website located at **http://www.oit.doe.gov/nice3**

For information on the NICE^3 grant or to receive an application package, contact the US DOE Golden Field Office directly at: **Eric**

Hass (303) 275-4728; Roxanne Danz (303) 275-4706; FAX (303) 275-4788 or (303) 275-4790.

For all other follow up questions, contact the Texas Natural Resource Conservation Commission at: Jeff Voorhis (512) 239-3178; FAX (512) 239-3165, jvoorhis@tnrcc.state.tx.us.

Please submit **five** copies of each project proposal before 5:00 pm on July 23,1999 to the following address: **Texas Natural Resource Conservation Commission, Small Business and Environmental Assistance Division, Attention Jeff Voorhis (MC-112), 12100 Park 35 Circle, Building E, Austin, Texas, 78753**

TRD-9903580
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 16, 1999

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Texas State Board of Examiners of Psychologists

Correction of Error

The Texas State Board of Examiners of Psychologists proposed amendments to 22 TAC §463.29, concerning reciprocity Agreements with Other Jurisdictions. The rule was published in the May 28, 1999, Texas Register (24 TexReg 3986). In paragraph (2) the words "of this title (relating to Persons with Criminal Backgrounds" is proposed new language. The phrase should have been unlined to designate it as new language.

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Texas Department of Public Safety

Notice of Award of Major Consulting Services Contract

The Texas Department of Public Safety (DPS), in accordance with provisions of Texas Government Code, Chapter 2254, announces the awarding of a consultant contract to aid the agency in its business process reengineering initiative.

The solicitation for request for offer was published in the April 9, 1999, *Texas Register*, (24 TexReg 2981).

The consultant contract was awarded to PricewaterhouseCoopers LLP, 12902 Federal Systems Park Drive, Fair Lakes, Virginia 22033.

The consultant contract begins on June 1, 1999, and will end August 31, 1999. The total value of the contract is $369,000.00.

The consultant is required to submit a Reengineering Plan to the Steering Committee no later than August 31, 1999.

TRD-9903486
Dudley M. Thomas
Director
Texas Department of Public Safety
Filed: June 14, 1999

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 8, 1999, Frontier Local Services, Inc., and Frontier Telemanagement, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend their service provider certificates of operating authority (SPCOAs) granted in SPCOA Certificate Numbers 60148 and 60149. Applicant intends to transfer their SPCOAs to Global Crossing, Ltd..

The Application: Application of Frontier Local Services, Inc., and Frontier Telemanagement, Inc. for Amendments to their Service Provider Certificates of Operating Authority, Docket Number 20858.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than June 30, 1999. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20858.

TRD-9903378
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 9, 1999

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 11, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of 2nd Century Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 20963 before the Public Utility Commission of Texas.

Applicant intends to provide facilities-based local exchange services, and bundled local and interexchange voice services, integrated with data, video and Internet services.

Applicant's requested SPCOA geographic area includes the entire state of Texas currently served by Southwestern Bell Telephone Company and GTE Southwest, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than June 30, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903554
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 1999

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Notice of Application to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 8, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Promotional Rates for Business Customers in Texas Who Subscribe to Call Transfer Disconnect Service Between July 1, 1999 and August 31, 1999 Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20949.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is instituting promotional rates for business customers in Texas, who subscribe to Call Transfer Disconnect service between July 1, 1999 and August 31, 1999. During the promotional period, new business subscribers of Call Transfer Disconnect will receive a waiver of the installation charge ($5.40) and a credit equal to one month of the monthly recurring rate ($15.00). Eligible customers are those who do not already subscribe to Call Transfer Disconnect. There are no retention requirements associated with this offer.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by June 30, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903447
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 10, 1999

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Notice of Intent to File Pursuant to P.U.C. Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for Aldine ISD In Houston, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for Aldine ISD in Houston, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20967.

The Application: Southwestern Bell Telephone Company is requesting approval of its application for an addition to the existing PLEXAR-Custom service for Aldine ISD in Houston, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Houston exchange, and the geographic market for this specific PLEXAR-Custom service is the Houston LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at PO Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903551
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 14, 1999

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Public Notices of Interconnection Agreement

On June 10, 1999, PrimeCo Personal Communications, L.P. and Lufkin-Conroe Telephone Exchange, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20957. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

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 13 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 20957. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 7, 1999, 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 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 docket or who wish to comment on the application should contact the Public Utility Commission of

Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20957.

TRD-9903526
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 14, 1999

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On June 10, 1999, Covad Communications Company and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20958. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

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 13 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 20958. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 7, 1999, 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 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 docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20958.

TRD-9903527
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 14, 1999

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On June 10, 1999, Valence Communications Services, Ltd and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an adoption of 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20959. 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 13 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 20959. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 7, 1999, 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 project 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. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20959.

TRD-9903528
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 14, 1999

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On June 10, 1999, Local Telcom Service, L.L.C. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20961. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

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 13 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 20961. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 7, 1999, 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 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 docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20961.

TRD-9903529
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 14, 1999

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On June 14, 1999, Southwestern Bell Telephone Company and JTC Communications, Inc. collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20969. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

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 13 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 20969. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 14, 1999, 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 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 docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20969.

TRD-9903572
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 1999

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Public Notice of Rescheduled Workshop on 9-1-1 Issues

The Public Utility Commission of Texas (commission) will hold a workshop regarding the effect of competition in the telecommunications industry on the provision of 9-1-1 service on Tuesday, July 20, 1999, at 10:00 a.m. in the Commissioners Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. This workshop was originally scheduled for July 8, 1999. Because of scheduling conflicts the July 8 workshop is cancelled and will now be held on July 20. Project Number 19203, 9-1-1 Rulemakings, has been established for this proceeding. The commission will use this workshop to discuss and analyze the effects of competition in the telecommunications industry on the provision of 911 services and whether the commission's rules need to be amended to account for competition.

Prior to the workshop, the commission requests interested persons to review and be prepared to discuss the draft rule provided for discussion purposes by the Advisory Commission on State Emergency Communications and certain emergency communication districts. This draft rule is intended to advance the discussion of the 9-1-1 issues under consideration in this project. At this time, the commission expresses no opinion on the draft rule. A copy of this draft rule has been filed and is available for review in Central Records under Project Number 19203. The comments filed in response to the notice for the workshop originally scheduled for July 8, 1999 will be considered in the workshop rescheduled for July 20, 1999.

Questions concerning the workshop or this notice should be referred to Thomas S. Hunter, Assistant General Counsel, Office of Regulatory Affairs, (512) 936-7280. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9903570
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 1999

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Public Notice of Workshop for Implementation of House Bill 1777

The Public Utility Commission of Texas (commission) will initiate several rulemakings as part of the House Bill 1777, 76th Legislature (1999), implementation process. In Phase I of this process, the commission will develop methodologies to collect and compile access line data to implement §283.005 and §283.055(h), (j)-(l) of the bill. On Friday, July 9 and Friday, July 30, 1999, commission staff will hold workshops to assist in gathering input to implement Phase I and to develop access line categories as required by the bill. Both workshops will begin at 9:30 a.m. and will be held in the Commissioners' Hearing Room at the offices of the Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711.

On Friday, June 18, 1999, staff will file in the commission's Central Records under Project Number 20935, a list of questions to be discussed at the workshop. The questions will also be posted at the commission's web site: http://www.puc.state.tx.us. Interested parties should file ten copies of responses to the questions in Project Number 20935 by noon on Thursday, July 6, 1999. Staff requests that parties also hand deliver two copies of responses to Diane Parker in the commission's Office of Policy Development and Elango Rajagopal in the commission's Office of Regulatory Affairs.

Parties may also submit draft rule language for staff consideration. Interested parties must submit copies of proposed draft rule language no later than Wednesday, July 14, 1999, under Project Number 20935.

If there are any questions, please contact Diane Parker at (512) 936-7204 or Elango Rajagopal at (512) 936-7392. Persons who plan to attend the workshops must register with Sharon Chapman at (512) 936-7329, or Sharon.Chapman@puc.state.tx.us.

TRD-9903571
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 1999

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Railroad Commission of Texas

Correction of Errors

The Railroad Commission of Texas submitted the adoption of new 16 TAC §20.201 for publication in the June 11, 1999, *Texas Register* (24 TexReg 4361).

On page 4362, due to an error by the Texas Register, text was omitted from the preamble. As filed by the Commission the preamble includes the phrase: "Issued in Austin, Texas, on May 25, 1999" which indicates the date on which the Commission signed the order adopting the rule.

Due to an error by the Texas Register, an old version of the form was published with the adoption. The correct form as adopted and filed by the Commission appears as follows.

NOTICE OF GIFT TO RAILROAD COMMISSION OF TEXAS PURSUANT TO 16 TAC 20.201

Please complete this form and include all information requested. Attach additional paper if necessary.

Donor/Gift Information:

Donor's Complete Legal Name _____ Date Form Completed _____

Address _____ Telephone _____ Fax _____

Description of intended gift (include serial or identification numbers, distinguishing features, etc.)

_____

_____

Estimated value of gift $_____ Date on which gift will be delivered or available to RRC _____

How will gift assist the Railroad Commission in carrying out its duties? (check all that apply)

- ☐ Supplies or equipment to be used in research or training program
- ☐ Facilities for training classes, marketing seminars, or similar events
- ☐ Travel, registration fees, or other expenses (not honoraria) to attend a meeting or conference at which the employee will be a speaker
- ☐ Equipment, expertise, or services to assist the Railroad Commission in implementing or maintaining electronic systems for communication, filing, payment, etc.
- ☐ Books or other reference materials
- ☐ Other (please explain) _____

Contested Case Status:

1. Is the donor a party in a contested case currently pending before the Railroad Commission? Yes No (circle one)

   If yes, list docket number, style, and filing date of every pending contested case in which the donor is a party

   _____

   _____

2. If the donor has been a party in a contested case which has been completed, list the docket number, style, and final order date of the case. (If the donor has been a party in more than one contested case, provide the requested information for the most recently-completed case.) _____

3. If the donor has never been a party in a contested case before the Railroad Commission, check here: ☐

4. Should the party status of the donor change prior to the date the Commission accepts the intended gift, I agree to notify the Commission immediately.

_____
Signature of Donor or Authorized Representative

_____
Printed Name of Donor or Authorized Representative

RRC Gift Form
New 6/99

FOR RRC USE ONLY

Division Director Review: (circle Yes or No)

1. Is the stated purpose for the gift accurate? Yes No If not, explain. _____

2. Is estimated value of gift accurate? Yes No If not, explain. _____

3. Other information: _____

4. Recommend acceptance of gift: Yes No

OGC Review:

1. Is the donor's information provided on contested case status correct? Yes No If not, what is correct status?

2. If donor is or was a party in a contested case, has at least 30 days passed since RRC order became final under Tex. Gov't Code, §2001.144? Yes No If no, what is earliest date gift could be accepted? _____

Executive Director Review:

1. Is all required information provided? Yes No

2. Is additional information necessary? Yes No If yes, notify the donor of specific information needed.

3. A. Value of gift less than $500:

Does gift meet terms of RRC rule 20.201? Yes No

Should RRC accept the gift? Yes No

If both answers are yes, sign and date below. Send copies of completed form to donor, OGC, Finance and Administration Division, and division director.

3. B. Value of gift $500 or more:

Item posted for discussion and action on open meeting notice for conference date of _____

Order drafted by OGC to accept gift? Yes No

Date RRC signed the order _____ (Attach copy.)

Donor notified of acceptance of gift by copy of this completed form and signed RRC order on date _____

Acceptance of Gift:

Gift received on date _____ File closed _____

_____
Executive Director

RRC Gift Form
New 6/99

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Sul Ross State University

Request for Proposals

Pursuant to Texas Government Code, Article 2254, Sul Ross State University, a Member of the Texas State University System, announces the solicitation for consultant services to advise and assist with the management and administration of Upward Bound Grant.

Project Summary: The Upward Bound Program, coordinated by Sul Ross State University in Alpine, Texas, is vital to approximately 2,240

eligible youth in the area who attend some of the neediest high schools in the nation. These students suffer from a cycle of poverty that is fed by high unemployment, low educational achievement, and isolation. The SRSU Upward Bound Program will motivate these low-income, potential first-generation college students and help them develop the skills they need to complete secondary education and succeed at the post secondary educational institution of their choice. Upward Bound activities will provide these services: academic counseling and assistance, career counseling and assistance, personal counseling and referral, parental and community involvement and assistance, exposure to the arts and cultural events, exposure to a university environment, mentoring by university personnel, and a university enrichment program.

Responses should be sent to Dr. Nadine F. Jenkins, Vice President for Enrollment Management and Student Services, Sul Ross State University, Highway 90 East, Alpine, Texas 79832. A copy of the request for proposal is available upon request from David C. Wilson, Purchasing Director, Sul Ross State University, PO Box C-116, Alpine, Texas 79832, phone (915) 837-8045, fax (915) 837-8046. Proposals should be delivered in a sealed envelope plainly marked: "Attention: Upward Bound Project Director". Three copies of the responses are required and are to be postmarked no later than September 1, 1999. They should address in detail the various items set forth.

The Sul Ross State University Upward Bound Development Team and the University Executive Committee will review the Consultants and their proposal. The University reserves the right to reject any and all proposals received in response to this request for proposals if it is determined to be in the best interest of the University to do so. All material submitted in response to this request becomes the property of the University and may be reviewed by other Consultants on the request for proposals after the official review of the proposals.

TRD-9903578
David C. Wilson
Purchasing Director
Sul Ross State University
Filed: June 16, 1999

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University of Houston System

Requests for Information

The University of Houston System (UH System) requests information from law firms interested in representing UH System and its component institutions certain federal tax matters. This RFI is issued to establish (for the time frame beginning September 1, 1999 to August 31, 2000) a referral list from which UH System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific federal tax matters as the need arises.

Description. The UH System comprises four universities-the University of Houston, University of Houston-Clear Lake, University of Houston-Downtown, and University of Houston-Victoria-each supported by legislative appropriations, tuition, fees, income from auxiliary enterprises, grants, gifts, sponsored research and other sources of revenue, all of which may be impacted by the Internal Revenue Code and Regulations of the Internal Revenue Service. Subject to the approval of the Texas Attorney General, UH System will engage outside counsel to provide legal counsel and advice to the UH System on matters pertaining to federal income, estate, gift, employment, and excise taxes. This legal counsel and advice will include, but not be limited to, the following: dealings with the IRS in audits, IRS appeals, U.S. Tax Court, and other tax matters; benefits issues such as those involving the Optional Retirement Program, 403(b) and 457(a) and (f) plans. The legal counsel will also advise and represent the System in matters relating to tax liens, tax garnishments, tax levies, tax assessments, tax valuations, as well as summonses, subpoenas, and discovery related to tax matters. Income Tax matters will also include unrelated business income tax as it relates to universities; and federal tax matters regarding compensation issues. The law firm must be admitted to practice before the United States Tax Court. UH System invites responses to this RFP from qualified firms for the provision of such legal services under the direction and supervision of UH System's Office of the General Counsel.

Responses. Responses to this RFP should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in federal tax-related matters including experience handling state pension issues and plans available only to universities, the names and experience of the attorneys who may be assigned to work on such matters, and the availability of the lead attorney and others assigned to the project, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; (2) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to UH System's federal tax-related matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost control(s) and billable expenses; (3) a description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UH System or to the State of Texas, or any of its board, agencies, commissions, universities, or elected or appointed official(s); and (5) confirmation of willingness to comply with policies, directives, and guidelines of the UH System and the Attorney General of Texas.

The firm should have a place of business in Houston, Texas, or be willing to either waive, or substantially limit, the expenses attributable to travel. All travel expenses are to be borne by the law firm.

Format and Person to Contact. Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail or delivered in person, marked "Response to Request for Proposal: Tax Counsel," and addressed to Dennis P. Duffy, General Counsel, Office of the General Counsel, The University of Houston System, 4800 Calhoun Street, Suite 212, Houston, Texas 77204-2162; fax: (713) 743-0948 (telephone (713) 743-0949 for questions).

Deadline for Submission of Responses. All responses must be received by the Office of General Counsel of the UH System at the address set forth above no later than Noon on Friday, July 16, 1999.

TRD-9903588
Peggy Cervenka
Executive Administrator
University of Houston System
Filed: June 16, 1999

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Requests for Proposals

The University of Houston System (UH System) requests proposals from law firms interested in representing UH System and its component institutions in intellectual property matters. This RFP is issued to establish (for the time frame beginning September 1, 1999 to August 31, 2000) a referral list from which UH System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific intellectual property matters as the need arises.

Description. The UH System comprises four universities-the University of Houston, University of Houston-Clear Lake, University of Houston-Downtown, and University of Houston-Victoria-each with a different mission, that together serve the diverse educational needs of the Houston metropolitan area and the upper Gulf Coast region. Research activities and other educational pursuits at each institution produce intellectual property that is carefully evaluated for protection and licensing to commercial entities. UH System will engage outside counsel to prepare, file, prosecute, and maintain patent applications in the United States and other countries; secure copyright protection for computer software; and to prepare, file and prosecute applications to register trademarks and service marks in the United States and other countries. UH System will also engage outside counsel from time to time to pursue litigation against infringers of these intellectual property rights. UH System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UH System's Office of the General Counsel.

Responses. Responses to this RFP should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in intellectual property-related matters; (2) the names, experience, and technical expertise of each attorney who may be assigned to the work on such matters, and the availability of the lead attorney and others assigned to the project; (3) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to UH System's bond matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost control(s) and billable expenses; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UH System or to the State of Texas, or any of its board, agencies, commissions, universities, or elected or appointed official(s); and (5) confirmation of willingness to comply with policies, directives, and guidelines of the UH System and the Attorney General of Texas.

Law firms responding to this proposal should have a place of business in Houston, Texas, or be willing to either waive, or substantially limit, the expenses attributable to travel. All travel expenses are to be borne by the law firm.

Format and Person to Contact. Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail or delivered in person, marked "Response to Request for Proposal: Intellectual Property Counsel Services," and addressed to Dennis P. Duffy, General Counsel, Office of the General Counsel, The University of Houston System, 4800 Calhoun Street, Suite 212, Houston, Texas 77204-2162 (telephone (713) 743-0949 for questions). The submitted proposal must be executed by a duly authorized representative of the proposer. All unsigned proposals will be rejected.

Deadline for Submission of Responses. All responses must be received by the Office of General Counsel of the UH System at the address set forth above no later than Noon, Friday, July 23, 1999. Proposal responses, modifications or addenda to an original response received by the System after that specified time and date for responses will not be considered.

TRD-9903586
Peggy Cervenka
Executive Administrator
University of Houston System
Filed: June 16, 1999

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The University of Houston System (UH System) requests proposals from law firms interested in representing UH System and its component institutions in communications law matters. This RFP is issued to establish (for the time frame beginning September 1, 1999 to August 31, 2000) a referral list from which UH System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific telecommunication matters as the need arises.

Description. The UH System comprises four universities-the University of Houston, University of Houston-Clear Lake, University of Houston-Downtown, and University of Houston-Victoria-each with a different mission, that together serve the diverse educational needs of the Houston metropolitan area and the upper Gulf Coast region. KUHT-TV (Channel 8), Houston Public Television is licensed to the University of Houston System Board of Regents. As a public service entity of the UH System, KUHT carries on a variety of public broadcasting services. KUHT receives no appropriations from the State of Texas; the state, by law, may not fund television broadcasting. Funding for the station is obtained from a Community Service Grant from the Corporation for Public Broadcasting, underwriting of programs and production by businesses and foundations, and monies raised from the community through memberships and special fund-raising events. The UH System provides transmission facilities and support services for KUHT. KUHF 88.7 is a professional, listener-supported 100,000-watt radio station serving the Houston and the greater Gulf Coast region with classical music and news 24 hours a day. Located at the University of Houston and licensed to the Board of Regents of the UH System, KUHF receives its financial support from corporate underwriting partnerships, individual memberships and special fundraising events. A grant is also received from the Corporation for Public Broadcasting. UH System will engage outside counsel from time to time to provide legal counsel and advice to the UH System on matters pertaining to Federal telecommunications law. This legal counsel and advice will include, but not be limited to, the following: dealings with the Federal Communications Commission, file and prosecuting applications before the FCC, licensing renewal and maintenance, and general telecommunications matters.

Responses. Responses to this RFP should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience with the Federal Communications Commission and other agencies in telecommunications; (2) the names, experience, and technical expertise of each attorney who may be assigned to the work on such matters, and the availability of the lead attorney and others assigned to the project; (3) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to UH System's telecommunication matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost control(s) and billable expenses; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year,

represented any entity or individual with an interest adverse to the UH System or to the State of Texas, or any of its board, agencies, commissions, universities, or elected or appointed official(s); and (5) confirmation of willingness to comply with policies, directives, and guidelines of the UH System and the Attorney General of Texas.

Law firms responding to this proposal should have a place of business in Houston, Texas, or be willing to either waive, or substantially limit, the expenses attributable to travel. All travel expenses are to be borne by the law firm.

Format and Person to Contact. Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail or delivered in person, marked "Response to Request for Proposal: Telecommunication Counsel Services," and addressed to Dennis P. Duffy, General Counsel, Office of the General Counsel, The University of Houston System, 4800 Calhoun Street, Suite 212, Houston, Texas 77204-2162 (telephone (713) 743-0949 for questions). The submitted proposal must be executed by a duly authorized representative of the proposer. All unsigned proposals will be rejected.

Deadline for Submission of Responses. All responses must be received by the Office of General Counsel of the UH System at the address set forth above no later than Noon on Friday, July 16, 1999. Proposal responses, modifications or addenda to an original response received by the System after that specified time and date for responses will not be considered.

TRD-9903587
Peggy Cervenka
Executive Administrator
University of Houston System
Filed: June 16, 1999

♦ ♦ ♦

Texas Workforce Commission

Extension of Closing Date for Request for Proposals for a Public Information and Education Strategic Plan for the Texas Commission on Volunteerism and Community Service

The Texas Workforce Commission (TWC), pursuant to the authority granted in Labor Code §302.002 and Government Code Chapter 2308, announced a Request for Proposals in the May 28, 1999, issue of the *Texas Register* (24 TexReg 4075). The notice solicited proposals for the development of and assistance with implementation of a Strategic Plan for Public Information and Education for the Texas Commission on Volunteerism and Community Service (TxCVCS). The Strategic Plan for Public Information and Education project (the Project) shall guide the provision of information to the public of services, programs and events sponsored by TxCVCS and its subordinate programs, as well as provide information regarding the benefits of citizen involvement in community-based organizations working to solve local social problems.

The proposal closing date of June 25, 1999, has been extended to July 9, 1999.

Proposers must submit an original and three copies of their proposal. Proposals sent via U.S. Mail should be sent to Boone Fields, TxCVCS, P.O. Box 13385, Austin, Texas 78711-3385. Proposals sent Airborne, Federal Express, other non-U.S. Mail carriers or hand delivered should be sent to Robert Hickerson, TxCVCS, Stephen F. Austin Building, 1700 North Congress, Suite 310, Austin, Texas 78701. All proposals must be received by the TxCVCS no later than 5:00 p.m., Central Daylight Time, Friday, July 9, 1999. TxCVCS will accept no proposals after this deadline.

The Primary Point of Contact at TxCVCS for this project is Mr. Boone Fields, Staff Services Officer, (512) 463-1983.

TRD-9903614
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 17, 1999

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Request for Proposals Child Care for Hidalgo/Willacy Service Delivery Area

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (TWC) is soliciting proposals to purchase Direct Child Care Delivery System services in Hidalgo and Willacy County. It is the intent of the TWC to contract with a child care service provider who is focused on improving the quality, availability and affordability of child care in this service delivery area. The child care service goals are to:

enable low-income parents with the financial rescues to find and afford quality child care for their children;

enhance the quality and increase the supply of child care for all families;

provide parents with a broad range of options in addressing their child care needs;

strengthen the role of the family;

improve the quality of and coordination among child care programs and early childhood development programs; and

increase the availability of early childhood development and before and after-school care services.

B. AUTHORIZATION TO AWARD CONTRACT

TWC is authorized to award contracts for child care services under the Human Resources Code, the Labor Code, and as the Lead Agency for the Child Care and Development Fund (CCDF).

C. AVAILABLE FUNDING

The total amount of available funding through this contract for State Fiscal Year 2000 is approximately $1,918,304 for DCCDS operations and $14,100,908 for direct child care delivery services. Funding availability is contingent upon legislative appropriation and TWC allocations.

D. ELIGIBLE APPLICANTS

Applicants submitting proposals to provide direct child care delivery services must complete an RFP Package, meet the following criteria and provide required documentation as requested in the application in order to be considered eligible. The DCCDS contractor must be able to perform a variety of tasks, including but not limited to the following:

Client services and case management;

Provider enrollment and management;

Funds and financial management;

Automated system maintenance and support; and

Coordination and collaboration with the Quality Improvement Activities Coordinator.

E. PROJECT SCHEDULE

Application submission deadline is July 22, 1999. The contract is set to begin on August 15, 1999 if a new contractor is selected; September 1, 1999, if the current contractor is selected. The contract is scheduled to end August 31, 2000.

F. SCORING CRITERIA

The evaluation criteria for this RFP and their relative weights for scoring are: Demonstrated Effectiveness of the bidder, 25 points; Quality of Proposal, 30 points; Cost Reasonableness, 20 points; Collaboration and Coordination, 15 points, and Financial Integrity/ Cash Flow, 10 points, for a maximum of 100 points.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

The Commission will use competitive negotiation for the procurement. Proposals will be evaluated by TWC and possible outside entities. TWC anticipates completing the selection process and notifying applicants of the application status the week of July 23, 1999. TWC will score proposals received and determine those within the competitive range. If one proposal is clearly superior, then the award will be made to that offeror. If two or more proposals are rated similarly, TWC may use negotiation to obtain amended proposals upon which to base a final award.

H. PAYMENT

The basis of payment for this award shall be reimbursement of actual allowable cost up to budgeted levels and subject to budget limitations.

I. TWC'S CONTACT PERSON

For further information and to order an Application Packet, contact the primary TWC contact person. The primary contact person for this RFP is Elwood Engebretson, Program Specialist, Texas Workforce Commission, Room 342T, 101 East 15th Street, Austin, Texas 78778-0001, (512) 936-4874, fax (512) 936-3420, e-mail address elwood.engebretson@twc.state.tx.us

TRD-9903568
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 15, 1999

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Request for Proposals JTPA Title III Dislocated Worker Services

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (TWC) is soliciting proposals to provide JTPA Title III services for workers dislocated from trade-related layoffs and unemployed farm workers in the Hidalgo/Willacy Local Workforce Development Area (LWDA). This program will have two separate components, through which contractors will provide (1) Project Management and Administrative Services and (2) Vocational Training Services for these targeted populations.

(1) Project Management and Administrative Services shall entail at the minimum:

Outreach and Orientation Sessions

Eligibility Determination

Vocational Assessment

Job Search Assistance

Intensive Case Management/Vocational Counseling Services

Job Development/Job Placement services

Referral to Training

Management of Participant Supportive Services

Relocation and Out of Area Job Search Assistance

Development of Individual Job Training Plans

(2) Vocational Training Services

Vocational Retraining services shall entail at the minimum:

Basic and Remedial Education

Computer Literacy

Intensive work-based English instruction

Pre-GED/GED Instruction in either English or Spanish

Vocational Skills Training Integrated with Workplace English Training

Any resulting contract will be awarded through a competitive request for proposals (RFP) process where more than one offeror may be considered to provide services in Hidalgo and Willacy counties. This program is designed to provide project management and administrative services as well as an integrated vocational training program to serve a large population of unemployed farm workers and workers who've lost their jobs due to trade-related layoffs.

Offerors may submit proposals for one or both components of the program listed in this RFP. Further, relative to the Vocational Training Services component, offerors may submit proposals for one or all of the training services listed.

B. AUTHORIZATION OF FUNDING

The funds are authorized under Section 302, Job Training Partnership Act, and are subject to the federal regulations at 20 CFR, Part 631, Subparts D and E, and all applicable provisions of the TWC Financial Manual for Grants and Contracts.

C. AVAILABLE FUNDING

The total amount of available funds shall be discussed at the bidders' conference. The estimated maximum number of participants to be served through this contract is 1164.

D. ELIGIBLE APPLICANTS

Applicants submitting proposals to provide Title III services must complete an Application Packet, meet the following criteria and provide required documentation as requested in the application to be considered eligible: (1)the offer must have been submitted by the due date for proposals; (2)the offer must be complete with required signatures; (3)the offer is for the requested services described in the instructions; and (4) the offeror must have a thorough knowledge of the elements required for an adult learner to be successful in completing vocational training. TWC will exclude from further consideration for contract award any non-responsive offer or portion of an offer and will notify the offeror by certified mail of the decision.

E. PROJECT SCHEDULE

Application submission deadline is July 19, 1999. The project is set to begin on August 1, 1999, and end June 30, 2000.

F. SCORING CRITERIA

The evaluation criteria for this RFP are individualized for Vocational Training Services and Project Management and Administrative Services.

Weights for scoring Project Management and Administrative Services are: Appropriateness of vocational and basic skill assessment instrument for target population, 15; Integration of assessment results with vocational counseling, 10; Demonstrated Performance relative to assessment of groups of workers with similar characteristics to target group, 5; Comprehensiveness of case management component, 5; Employer-driven job search/job development component, 15; Integration of job search/job development component with case management component, 10; Demonstrated Performance relative to job placement of groups of workers with similar characteristics to target group, 20; Experience of principal staff in managing programs of similar nature, 10; and Overall design of Project Management and Administrative services component, 10.

Weights for Vocational Training services are: Integration of vocational skills training with English that relates to an occupation, 20; Type of occupational skills training targeted, 10; Measurement of participant progress in classroom training, 10; Demonstrated success in placement of participants with characteristics similar to those of the target groups in unsubsidized employment, 20; Evidence that vocational training is employer driven and in a demand occupation, 20; Design of basic skills training based on a workplace English or bilingual approach, 10; and Demonstrated experience of key staff, 10.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

Proposals will be graded by the Texas Workforce Commission. Grading criteria will be included in the application packet. Negotiations will take place immediately after selection. A person designated and authorized by the selected applicant organization to make budget and/or programmatic decisions must be readily available to respond to requested revisions between July 26 and 30, 1999.

Negotiations will be conducted by TWC as scheduled. A representative of a selected offeror must be available to attend contract negotiations as scheduled by TWC. TWC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas.

H. PAYMENT

Payment for Project Management and Administrative Services performed shall be billed on a cost reimbursement basis. Payment for Vocational Training Services performed may be billed on a cost reimbursement basis or on a tuition-based, individual referral basis.

I. TWC'S OBLIGATIONS

TWC's obligations under this RFP are contingent upon the actual receipt by the Agency of Funds from the US Department of Labor. If adequate funds are not available to make payment under the terms of this contract, TWC shall terminate this RFP or resulting contract and will have no liability for payments for any expenditures related to this RFP or a resulting contract. Information on the date and time of the Bidder's Conference will be available by contacting the contact person identified herein, and in the Application Packet. For further information and to order an Application Packet, contact the TWC primary contact person for this RFP: Allison Thomas, Program Specialist, Texas Workforce Commission, Room 342-T, 101 East 15th Street, Austin, Texas 78778-0001, telephone: (512) 936-3555, fax: (512) 936-3420, email: allison.thomas@twc.state.tx.us.

TRD-9903592

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: June 16, 1999

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Request for Proposals Quality Initiatives for Hidalgo/Willacy Service Delivery Area

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (Commission) is soliciting proposals to provide Quality Initiative Activities (QIA) in Hidalgo and Willacy counties. It is the intent of the TWC to contract with an eligible entity who is focused on improving the quality of child care services in Hidalgo and Willacy counties through Child Care Training (CCT) and Early Childhood Development Resources (ECDR).

Child Care Training: The purpose of the Child Care Training component is to provide high quality training to those people who work with young children in licensed child care facilities, licensed group day homes, registered family homes, and self-arranged child care providers. Objectives include:

Improving the quality of child care offered throughout the workforce development area (WDA) by providing high quality child care training opportunities that will increase the skill levels of child care professionals;

Identifying, collaborating, and coordinating with other community-based training resources to avoid duplication of training;

Offering training based on the needs of all eligible participants throughout the WDA;

Offering a variety of training options including different levels of training throughout the WDA;

Ensuring that all eligible child care staff are informed of training opportunities;

Ensuring that trainers understand and are experienced and effective in meeting training needs of adults, and

Evaluating the training offered to improve the effectiveness of training throughout the WDA.

Early Childhood Development Resources. The purpose of the Early Childhood Development Resources component is to provide an opportunity for child care providers to access developmentally appropriate materials and equipment and to provide technical assistance for the selection and use of these developmentally appropriate materials and equipment. Objectives include:

Ensuring that equipment purchased meets the need of the child;

Improving quality of care;

Coordinating resources in order to avoid duplication of the service; and

Ensuring that all child care providers have access to ECDR resources.

B. AUTHORIZATION TO AWARD CONTRACT

TWC is authorized to award contracts for child care training and early childhood development resource services under the Labor Code, Chapter 302, and shall be subject to the provisions of the Human Resources Code, Chapters 31 and 44, the federal regulations at 45 CFR Parts 98 and 99, and the state rules at 40 TAC Chapter 809, and the TWC Financial Manual for Grants and Contracts, specifically Module 2 relating to the Child Care and Development program.

C. AVAILABLE FUNDING

Total amount of funds available under this RFP is approximately $107,984. Contracts for services will be effective September 1, 1999 through August 31, 2000. Funding may be requested in any amount up to the maximum available. TWC contemplates making one or more awards under this RFP in order to utilize available funds to the greatest extent. Contracts may be renewed, 12 months at a time, for up to 36 months after that (September 1, 2000 through August 31, 2003), contingent upon satisfactory performance and Board approval.

D. ELIGIBLE APPLICANTS

To be considered eligible to provide Quality Initiative Activities services, applicants submitting proposals must complete an Application Packet, provide the required documentation as requested in the packet, and meet the following criteria: (1) the offer must have been submitted by the due date for proposals; (2) the offer must be complete with the required signatures; (3) the offer must be for the requested services described in the instructions; (4) the funding requested is not more than the maximum amount; (5) the offeror must agree to provide the services in collaboration with the communities and the community professionals and/or agencies within the WDA to ensure child care training needs are met and to ensure non-duplication of services. TWC will exclude from further consideration for contract award any non-responsive offer or portion of an offer. TWC will notify the offeror by certified mail of the decision.

E. PROJECT SCHEDULE

Application submission deadline is July 22, 1999,

Notification of Award begins July 29, 1999,

Contract start date is September 1, 1999, and

Project end date is August 31, 2000.

F. SCORING CRITERIA

The evaluation criteria and relative weight for this RFP are: Quality of Program Design, 25 points; Demonstrated Effectiveness, 25 points; Cost, 25 points; Collaboration and Coordination, 15 points; Financial Integrity/Cash Flow, 10 points, for a maximum of 100 points.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

The Commission will use competitive negotiation for the procurement. Proposals will be evaluated by TWC and possible outside entities. Evaluation criteria will be described in the RFP packet. TWC anticipates completing the selection process and notifying applicants of the application status the week of July 23, 1999. TWC will score proposals received and determine those within the competitive range. If one proposal is clearly superior, then the award will be made to that offeror. If two or more proposals are rated similarly, TWC may use negotiation to obtain amended proposals upon which to base a final award.

H. PAYMENT

The basis of payment for this award shall be reimbursement of actual allowable cost up to budgeted levels and subject to budget limitations.

I. TWC'S CONTACT PERSON

For further information and to order an Application Packet, contact the primary TWC contact person. The primary contact person for this RFP is Lucinda Anderson, Program Specialist, Texas Workforce Commission, Room 342T, 101 East 15th Street, Austin, TX 78778-0001, (512) 936-3789, fax (512) 936-3420, e-mail address lucinda.anderson@twc.state.tx.us

TRD-9903567
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: June 15, 1999

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