WITHDRAWN RULES

ADOPTED RULES

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 No. JC-0311

The Honorable Robert L. Busselman, Karnes County Attorney, 101 North Panna Maria, Suite 10, Karnes City, Texas 78118

Re: Whether a building owned by the Karnes County Hospital District, but leased to physicians for their private medical practice is tax-exempt (RQ-0259-JC)

S U M M A R Y

A building owned by the Karnes County Hospital District, but leased to physicians for their private medical practice is not exempt from ad valorem taxation.

Opinion No. JC-0312

The Honorable Tom O'Connell, Criminal District Attorney, Collin County Courthouse, 210 South McDonald, Suite 324, McKinney, Texas 75069

Re: Responsibility of a sheriff for taking custody of a person hospitalized for injuries sustained while being arrested by law enforcement officers of a different jurisdiction (RQ-0263-JC)

S U M M A R Y

A person arrested by a law enforcement agency other than the sheriff's department, and hospitalized as a result of that arrest, becomes the responsibility of the sheriff, pursuant to article 2.18 of the Code of Criminal Procedure, upon the issuance by a magistrate of a commitment order directing that the sheriff "receive and place in jail the person so committed." See Tex. Code Crim. Proc. Ann. arts. 2.18, 16.20 (Vernon 1977).

Opinion No. JC-0313

The Honorable Jeff Wentworth, Chair, Committee on Nominations, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068

Re: Whether a component committee of the Edwards Aquifer Authority is subject to the Open Meetings Act when a majority of the members of the Authority's Board attends a meeting of the committee (RQ-0262-JC)

S U M M A R Y

A component committee of the Board of the Edwards Aquifer Authority is subject to the Open Meetings Act when a majority of the voting members of the Authority's Board, including the committee members, is present at a meeting of the committee, and the Board members "receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy" over which the Edwards Aquifer Authority has authority, regardless of whether the committee members or any Board members engage in a deliberation as defined by Government Code section 551.001(2). Tex. Gov't Code Ann. § 551.001 (Vernon Supp. 2000).

For further information, please call (512) 463-2110

TRD-200008451
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: December 4, 2000

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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. 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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL
SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, amendments to §20.22, concerning the authorized cotton destruction dates in Pest Management Zones 6 and 7. A prior emergency amendment filed on October 30, 2000, and published in the November 17, 2000 issue of the *Texas Register* (25 TexReg 11349), extended the cotton destruction date for Zone 6, through November 30, 2000. That emergency amendment expires on December 1. The current cotton destruction deadline for Zone 7 is also November 30. The deadline will be extended through December 14, 2000 for Zone 6, and through December 30, 2000 for Zone 7.

The department is acting on behalf of cotton farmers in Zone 6, which includes Bastrop, Burnet, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis, and Williamson counties, and on behalf of cotton farmers in Zone 7 which includes Anderson, Angelina, Brazos, Burleson, Cherokee, Grimes, Hardin, Houston, Jasper, Leon, Madison, Montgomery, Nacogdoches, Newton, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler and Walker counties. The department believes that extending the cotton destruction dates for Zones 6 and 7 is both necessary and appropriate. The extensions are effective only for the 2000 crop year.

Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction date for these counties. The unusually wet weather prior to the cotton destruction period has prevented many cotton producers from destroying cotton by the November 30 deadline. A failure to act to extend the cotton destruction deadline in these counties could create a significant economic loss to Texas cotton producers and the state's economy.

The emergency amendment to §20.22(a) will extend the date for cotton stalk destruction through December 14, 2000 in Zone 6 and will extend the date for cotton stalk destruction thorough December 30, 2000 in Zone 7.

The amendments to §20.22(a) are adopted on an emergency basis under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. Stalk Destruction Requirements

(a) Deadlines and methods. All cotton plants in a pest management zone shall be destroyed, regardless of the method used, by the stalk destruction dates indicated for the zone. Destruction shall be accomplished by the methods described as follows:
Figure: 4 TAC §20.22(a)

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

Filed with the Office of the Secretary of State, on November 30, 2000.

TRD-200008337
Dolores Alvarado Hibbs
Executive Director
Texas Department of Agriculture
Effective date: December 1, 2000
Expiration date: January 1, 2001
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 7. GAS UTILITIES DIVISION

SUBCHAPTER B. SUBSTANTIVE RULES

16 TAC §7.60

The Railroad Commission of Texas adopts on an emergency basis new 16 Texas Administrative Code (TAC) §7.60, relating to discontinuance of natural gas service during winter months. This emergency rule is effective immediately upon filing with the Secretary of State and will be in effect for 120 days.

The Commission finds that new §7.60 is necessary because heating costs will be higher this winter season due to a combination of higher than normal gas costs and colder than average temperatures. The Commission currently projects natural gas prices, which averaged $3.07 per Mcf for Texas residential customers during the 1999-2000 heating season, to more than double for the same period in 2000-2001. Commission data show that even during relatively mild winter heating seasons, residential natural gas consumption is at its highest during those months, averaging 10 Mcf per month compared to five Mcf on an annual basis. In addition, the National Oceanic and Atmospheric Administration (NOAA) data for the week ending November 18, 2000, show that weather in Texas, measured by heating-degree days, has this heating season been 67% colder than normal. The Commission finds that residential natural gas consumption will be higher than average and that the average winter residential gas bill will be more than 50% higher under this combination of factors.

Further, the Commission finds that the weather is inherently unpredictable and variable across the different regions in Texas. For example, extreme weather conditions can exist in the panhandle while coastal areas are unaffected. Customers in one area of the state could already be adversely impacted by the weather conditions that would invoke this rule by the time the conditions are known with certainty at the Commission's Austin headquarters.

The Commission finds that, in times of higher energy costs, consumers may restrict their consumption of natural gas for residential heating to levels that could be detrimental to their well being. The Texas Department of Health recognizes the dangers of cold weather and is currently developing educational material on hypothermia (severe or prolonged loss of body heat because of cold environments). In 1999, at least 21 people died in Texas from hypothermia; of those 21, at least 17 (81%) were age 60 or older and many of them died unexpectedly in their own homes. Without adequate heat, many people, especially the elderly, are in danger long before the temperature drops to freezing. Hypothermia is a below-normal body temperature, typically 96 degrees Fahrenheit or lower, and can threaten the health of older people in cool indoor temperatures as high as 60 degrees Fahrenheit. In Texas, it is uncommon for temperatures to drop to freezing for 24 hours or more. It is not, however, uncommon for temperatures to be below 60 degrees for extended periods of time.

The Commission finds that having §7.60 in place before the onset of the combination of extreme weather conditions and higher gas prices provides appropriate assurance to residential consumers that, during periods of extreme cold, their residential natural gas service will not be disconnected because of delinquent bills. Thus the rule is likely to prevent unnecessary suffering and, perhaps, irremediable harm. Therefore the Commission finds that there is an imminent peril to the public health, safety, and welfare necessitating the adoption of new §7.60 without prior notice or hearing.

The Commission does not simultaneously propose this new rule for adoption through regular rulemaking procedures. Rather, the Commission wishes to develop a permanent rule by working with all interested persons -- consumers as well as natural gas service providers -- giving everyone an opportunity to participate. The Commission staff has begun drafting a rule to propose for permanent adoption.

New §7.60 applies to gas utilities and to owners, operators, and managers of master meter systems within the original jurisdiction of the Railroad Commission. For purposes of the rule, all such gas utilities and owners, operators and managers of master meter systems are referred to as "providers."

Providers may not disconnect a customer on a day when the previous day's temperature in the county where the customer takes service fell below 40 degrees Fahrenheit and the National Weather Service predicts that the temperature in that county will fall below that level during the next 24 hours. Providers may not disconnect service to a delinquent residential customer for a billing period in which the provider receives a pledge, letter of intent, purchase order, or other notification from an energy assistance provider that it is forwarding sufficient payment to continue service. Finally, providers may not disconnect service to a delinquent residential customer on a day, or on a day immediately preceding a day, when personnel of the provider are not available for the purpose of receiving payment or making collections and reconnecting service.

For delinquent bills, providers are encouraged to offer customers a deferred payment plan as set forth in the Commission's quality of service rule, 16 TAC §7.45(2), or a level or average payment plan. A level payment plan must allow residential customers to pay one-twelfth of that customer's estimated annual consumption at the appropriate customer class rates each month, with provisions for annual adjustments as may be determined based on actual gas use. An average payment plan must allow residential customers to pay one-twelfth of the sum of the customer's current month's consumption plus the previous 11 months consumption (or, for a new customer, an estimate) at the appropriate customer class rates each month, plus a portion of any unbilled balance.

If a customer does not fulfill the terms and obligations of a level or average payment plan, a provider that is a gas utility has the right to disconnect service to that customer pursuant to Commission rule §7.45(4), unless disconnection would be prohibited under subsection (b) of this rule. A provider that is a gas utility may require a deposit from all customers entering into level or average payment plans pursuant to the requirements of §7.45(5). The gas utility would be required to pay interest on the deposit and may retain the deposit for the duration of the level or average payment plan.

The rule requires that within 10 days of the date of adoption of this rule, providers must provide a copy of this rule to the social services agencies that distribute funds from the Low Income Home Energy Assistance Program within its service area; any

other social service agency of which the provider is aware that provides financial assistance to low income customers in its service area; and any customers who are owners, operators, or managers of master metered systems. Further, providers must provide a copy of this rule to all other customers of the provider in the next feasible billing statement. The Commission will also provide notice of the emergency rule on its Web site.

The new section is adopted on an emergency basis under the Texas Government Code, §§2001.034 and 2001.036, and Texas Utilities Code, §§102.001, 104.251, 124.001 and 124.002.

Issued in Austin, Texas, on November 28, 2000.

§7.60. Suspension of Gas Utility Service Disconnection During Winter Months.

(a) Applicability and scope. This rule applies to gas utilities, as defined in Texas Utilities Code, §§101.003(7) and 121.001, and to owners, operators, and managers of mobile home parks or apartment houses who purchase natural gas through a master meter for delivery to a dwelling unit in a mobile home park or apartment house, pursuant to Texas Utilities Code, §§124.001-124.002, within the jurisdiction of the Railroad Commission pursuant to Texas Utilities Code, §102.001. For purposes of this section, all such gas utilities and owners, operators and managers of master meter systems shall be referred to as "providers." Providers shall comply with the following service standards. A gas distribution utility shall file amended service rules incorporating these standards with the Railroad Commission in the manner prescribed by law.

(b) Disconnection prohibited. Except where there is a known dangerous condition or a use of natural gas service in a manner that is dangerous or unreasonably interferes with service to others, a provider shall not disconnect natural gas service to:

(1) any customer on a day when the previous day's temperature in the county where the customer takes service fell below 40 degrees Fahrenheit and the National Weather Service predicts that the temperature in that county will fall below that level during the next 24 hours;

(2) a delinquent residential customer for a billing period in which the provider receives a pledge, letter of intent, purchase order, or other notification from an energy assistance provider that it is forwarding sufficient payment to continue service; or

(3) a delinquent residential customer on a day, or on a day immediately preceding a day, when personnel of the provider are not available for the purpose of receiving payment or making collections and reconnecting service.

(c) Payment plans. Providers are encouraged to offer either a deferred payment plan for any delinquent bill of a residential customer rendered or past due as set forth in paragraph (2)(D), concerning Deferred Payment Plans, of §7.45 of this title (relating to Quality of Service) or a level or average payment plan to all customers. Any level or average payment plan shall use one of the following methods:

(1) A level payment plan shall allow residential customers to pay one-twelfth of that customer's estimated annual consumption at the appropriate customer class rates each month, with provisions for annual adjustments as may be determined based on actual gas use.

(2) An average payment plan shall allow residential customers to pay one-twelfth of the sum of the customer's current month's consumption plus the previous 11 months consumption (or, for a new customer, an estimate) at the appropriate customer class rates each month, plus a portion of any unbilled balance.

(3) If a customer does not fulfill the terms and obligations of a level or average payment plan, a provider that is a gas utility shall have the right to disconnect service to that customer pursuant to paragraph (4), concerning Discontinunace of Service, of §7.45 of this title (relating to Quality of Service), unless disconnection is prohibited under subsection (b) of this section.

(4) A provider that is a gas utility may require a deposit from all customers entering into level or average payment plans pursuant to the requirements of paragraph (5), concerning Applicant Deposit, of §7.45 of this title (relating to Quality of Service). The gas utility shall include the amount already deposited by the customer in calculating a deposit required under this paragraph. The gas utility shall pay interest on the deposit and may retain the deposit for the duration of the level or average payment plan.

(d) Notice. Within 10 days of the date of adoption of this rule providers shall give a copy of this rule to:

(1) the social services agencies that distribute funds from the Low Income Home Energy Assistance Program within its service area;

(2) any other social service agency of which the provider is aware that provides financial assistance to low income customers in its service area;

(3) any customers who are owners, operators, or managers of master metered systems; and

(4) all other customers of the provider in the next feasible billing statement.

Filed with the Office of the Secretary of State, on November 28, 2000.

TRD-200008244
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: November 28, 2000
Expiration date: March 28, 2001
For further information, please call: (512) 475-1295

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

The Health and Human Services Commission (HHSC) proposes amendments to Chapter 355, Medicaid Reimbursement Rates; Subchapter D, §§355.451, 355.452, 355.453, 355.454, 355.456, 355.457, 355.458, relating to Reimbursement Methodology for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program; and Subchapter F, §§355.701, 355.702, 355.703, 355.704, 355.705. 355.706, 355.707, 355.708, 355.709, 355.722, 355.723, 355.732, 355.733, 355.741, 355.742, 355.743, 355.761, 355.773, 355.775, 355.781, relating to General Reimbursement Methodology for all Medical Assistance Programs.

Background and Summary of Factual Basis for the Rules

Section 531.021, Government Code, entitled "Administration of Medicaid Program," provides, among other things, that HHSC adopt rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program.

Pursuant to this authority HHSC assumed responsibility for the determination and adoption of Medicaid provider payment rates. In addition, transferred rules adopted by state agencies that operate portions of the state Medicaid program and that regulate the determination of reimbursement rates to Medicaid providers. Among the rules so transferred were rules of the Texas Department of Mental Health and Mental Retardation (TDMHMR) that relate to Medicaid provider payment rates. See 22 TexReg 12748.

The majority of the proposed amendments are non-substantive revisions to current rules that update chapter titles to more accurately reflect current operations, clarify the respective responsibilities of HHSC and TDMHMR regarding the determination and payment of reimbursement rates to Medicaid providers enrolled in TDMHMR Medicaid programs, and delete obsolete provisions of the rules that governed cost determination or reimbursement rates for particular years. The proposed amended rules also delete provisions that currently require rate proposals to be reviewed by the Board of Mental Health and Mental Retardation.

Section-by-Section Explanation

Subchapter D governs determination of reimbursement rates to providers enrolled in the ICF/MR program of TDMHMR. Sections 355.451, 355.452, 355.453, 355.454, 355.456, 355.457, 355.458 are amended to correct references to HHSC and TDMHMR, provide appropriate cross-references to other rules, or supply titles to clarify the subject matter of particular paragraphs. In addition, sections 355.456 and 355.458 are amended to delete a requirement that the TDMHMR board review and approve recommended rates prior to adoption by HHSC. Section 355.457 is also amended to delete obsolete provisions relating to cost reports for the 1997 provider fiscal year and to add language that clarifies which procedures are applicable to repayment of funds for provider fiscal years (or parts of fiscal years) that occur after April 5, 1998, and January 1, 1999.

Subchapter F governs reimbursement methodologies for Medicaid programs operated by TDMHMR. Sections 355.701, 355.702, 355.703, 355.704, 355.705, 355.706, 355.707, 355.708, 355.709, 355.722, 355.723, 355.732, 305.733, 355.741, 355.742, 355.743, 355.761, 355.773, 355.775, and 355.781 are amended to correct references to HHSC and TDMHMR, add language that clarifies the subject matter of particular paragraphs, and add cross-references to other rules. Section 355.702 is also amended to delete an obsolete requirement that written comments be prepared and delivered to the TDMHMR board which summarize public comments at reimbursement rate hearings. Section 355.722 is also amended to clarify that HCS providers must report costs annually and to delete obsolete provisions relating to the initial rate period established under the rule and the analysis of 1997 provider fiscal year cost reports. Section 355.723 is also amended to delete a requirement that the TDMHMR board review and approve recommended rates prior to adoption by HHSC and

to clarify that rates paid to HCS providers are prospective in nature and set on an annual basis. Section 355.733 is also amended to delete a reference to the federal Social Security Act and the federal Omnibus Budget and Reconciliation Act of 1987 that are unnecessary after designation of the HCS-O waiver program by TDMHMR. Section 355.741(2) is also amended to add a cross-reference to TDMHMR rules regarding Service Coordination. Section 355.742 is also amended to correct a reference to the Texas Health Steps program. Section 355.743 is also amended to delete references to repealed or obsolete TDMHMR rules, requirements that the TDMHMR board review and approve recommended rates prior to adoption by HHSC, and a reference to access provider records by designated agents. Section 355.773 was amended to include subject headings for particular paragraphs. Section 355.775 was also amended to delete a requirement that the TDMHMR board review and approve recommended rates prior to adoption by HHSC. Section 355.781 was also amended to correct references to HHSC and TDMHMR rules and the index used to inflate 1994 salaries. Section 355.781 was also amended to delete references to obsolete TDMHMR rules and amended to correct references to HHSC and TDMHMR rules.

Public Benefit

Don Green, Chief Financial Officer, has determined that during the first five years that the proposed amended rules are in effect, the public will benefit from adoption of the amended rules from the clarification .

Fiscal Note

Don Green, Chief Financial Officer, has determined that because the proposed amendments impose no substantive changes in reimbursement rate methodologies, there is no anticipated fiscal impact resulting from the adoption of the amendments. No additional costs will be borne by local governments as a result of the proposed amended rules, nor is there any anticipated impact of revenues of state or local government.

Small and Micro-business Impact Analysis

The proposed amended rules will not result in additional costs to persons required to comply with the rules, nor do the rules have any anticipated adverse effect on small or micro-businesses. The rules will not affect local employment.

Regulatory Analysis

HHSC has determined that none of the proposed amended rules is a "major environmental rule" as defined by § 2001.0225, Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. None of the proposed amended rules is specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has assessed the takings impact of the proposed amended rules under Texas Government Code, §2007.043. HHSC has determined that this action does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking. The majority of the proposed amendments are administrative, non-substantive, and do not impose any new regulatory requirements. The proposed amended rules are reasonably taken to fulfill requirements of state law.

Public Comment

Public comment may be submitted in writing to Steve Lorenzen, Director, Medicaid Rates Setting, Health and Human Services Commission, by mail addressed to 4900 North Lamar Blvd., 4th Floor, Austin, Texas 78751, or by facsimile to (512) 424-6603. Comments must be submitted by 5:00 p.m., January 15, 2001. Further information may be obtained by calling Steve Lorenzen at (512) 424-6603. Subchapter D. Reimbursement Methodology for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR THE INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR) PROGRAM

1 TAC §§355.451-355.454, 355.456-355.458

Statutory Authority

The amended rules are proposed under §531.021(b), Government Code, which requires HHSC to adopt reasonable rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program ; and §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of HHSC under Chapter 531, Government Code.

The proposed amended rules implement §531.021(b), Government Code, concerning the adoption of rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, and §32.0281, Human Resources Code, concerning the adoption of rules regarding Medicaid reimbursement rates.

§355.451. Definitions and General Reimbursement Information.

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

(1) Cost Report--Any cost data or financial information submitted by a provider to HHSC[~~TDMHMR~~].

(2) Fiscal Accountability Cost Report--Annual survey conducted by HHSC[~~TDMHMR~~] in which cost data related to direct care services is submitted by providers.

(3) Full Cost Report--Cost data required by HHSC[~~TDMHMR~~] that includes all costs of providing services including direct services costs, administration, facility costs, and all other operating costs relevant to the provision of services.

(4) GAAP--Generally accepted accounting principles.

(5) GAAS--Generally accepted auditing standards.

(6) HHSC-the Texas Health and Human Services Commission or its designee.

(7) [~~(6)~~] ICF/MR--An intermediate care facility for persons with mental retardation and related conditions.

(8) [~~(7)~~] Person--An individual, partnership, corporation, association, governmental subdivision or agency, or a public or private organization of any character.

(9) [~~(8)~~] Provider--Any person with whom TDMHMR has an ICF/MR provider agreement.

(10) [~~(9)~~] Provider agreement--Any written agreement that obligates TDMHMR to pay money to a person for goods or services under the Title XIX Medical Assistance Program.

(11) [~~(10)~~] Rebase--The revision to the underlying assumptions on which the modeled rates are calculated, including revisions to staffing ratios, pay structure, the composition of direct care staff, or other cost factors used in the formula for modeling the rates.

(12) [~~(11)~~] State-operated facility--An ICF/MR for which a facility or division of TDMHMR is the provider.

(13) [~~(12)~~]TDMHMR--The Texas Department of Mental Health and Mental Retardation or its designee.

(b) TDMHMR reimburses providers for services provided to eligible recipients in ICFs/MR. [~~The Texas MHMR Board determines reimbursement rates at least annually in accordance with Subchapter F of this chapter (relating to General Reimbursement Methodology for all Medical Assistance Programs) and this subchapter.~~] There are two types of facilities: non-state operated and state-operated.

(1) Non-state operated facilities.

(A) Except for demonstration or pilot projects involving experimental classes as specified in §355.456 of this title (relating to Rate Setting Methodology), reimbursement rates for levels-of-need are uniform statewide for the same class of non-state operated facilities. Rates are set prospectively with no annual settlement.

(B) Classes of non-state operated facilities. Classes of non-state operated facilities are based upon facility size.

(2) State-operated facilities. Rates for state-operated facilities are set prospectively based on each facility's historical cost pattern with adjustments for inflation. There is no differentiation based on client level-of-need categories.

§355.452. Cost Reporting Procedures.

(a) Reporting costs. Each provider must submit financial and statistical information on forms provided by HHSC[~~TDMHMR~~] on facsimiles which are formatted according to HHSC's[~~TDMHMR's~~] specifications and are preapproved by HHSC[~~TDMHMR~~].

(b) Record keeping requirements. Each provider must retain records according to TDMHMR and HHSC rules [~~the requirements in 25 TAC Chapter 406, Subchapter G (Additional Facility Responsibilities)~~]. Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and statistical information provided to HHSC[~~TDMHMR~~].

(c) Noncompliance with record keeping requirements. Failure to retain records that support the information submitted to HHSC[~~TDMHMR~~] constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in TDMHMR and HHSC rules [~~25 TAC §406.62(c)(2) (Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements)~~].

(d) Allowable and unallowable costs. Providers must complete cost reports in accordance with §355.453 of this title (relating to Allowable and Unallowable Costs) and §355.708 of this title (relating to Allowable and Unallowable Costs).

(e) Certification. Providers must certify the accuracy of cost reports submitted to HHSC[~~TDMHMR~~]. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to HHSC[~~TDMHMR~~] requirements.

(f) Due date. Providers must submit direct services cost surveys no later than 45 calendar days after the end of the reporting period or 45 days after the date that HHSC[~~TDMHMR~~] mails the form to the provider, whichever is later. Providers must submit full cost reports no later than 90 days after the reporting period or 90 days after the date that HHSC[~~TDMHMR~~] mails the form to the provider, whichever is later.

(g) Extension of due date. HHSC[~~TDMHMR~~] may grant extensions of due dates for good cause. Good cause is defined as one that the provider could not reasonably be expected to control. A provider must submit a written request for extension to HHSC[~~TDMHMR~~] before the cost report due date. HHSC[~~TDMHMR~~] will respond to a request for extension within 10 working days of its receipt.

(h) Cost data. HHSC[~~TDMHMR~~] may at times require additional financial and statistical information to ensure the fiscal integrity of the Texas Medicaid ICF/MR Program. Each provider must submit additional information to HHSC[~~TDMHMR~~] upon request, unless the information is not at the provider's disposal.

(i) Failure to submit requested data. Failure to submit acceptable cost data by the due date constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in 25 TAC §406.62(c)(2) (Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements).

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

(k) On-site audits. HHSC[~~TDMHMR~~] performs a sufficient number of on-site financial audits to ensure the fiscal integrity of the TDMHMR Medicaid Programs. The number of on-site audits performed may vary.

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

(m) Access to records. Each provider must allow access to any and all records necessary to verify cost data submitted to HHSC[~~TDMHMR~~]. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider that are directly or indirectly related to the provision of contracted services. Failure to allow inspection of pertinent records within 10 working days following written notice from HHSC[~~TDMHMR~~] constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in TDMHMR and HHSC rules [~~25 TAC §406.62(c)(2) (regarding Sanction Provisions for Violations of Title XIX ICF/MR Contractual Agreements)~~]. If a central office or other entity pertaining to a multi-facility operation refuses access to records, then the penalties are extended to all of the provider's entities having Medicaid contracts with TDMHMR. Additional rules regarding access to records that are out-of-state are in §355.703 [~~§355.702~~] of this title (relating to Basic

Objectives and Criteria for Review of Cost Reports [~~Methods for Cost Determination~~]).

(n) Reviews of exclusions or adjustments. A provider who disagrees with HHSC's [~~TDMHMR's~~] exclusion or adjustment of items in cost reports may request an informal review and, when necessary, an administrative hearing as specified in §355.707 of this title (relating to Reviews and Administrative Hearings).

(o) Notification of exclusions and adjustments. HHSC[~~TDMHMR~~] will notify a provider of exclusions and any adjustments including caps applied to reported costs made during HHSC's [~~TDMHMR's~~] desk reviews and on-site audits.

§355.453. Allowable and Unallowable Costs.

(a) General information. HHSC[~~TXMHMR~~] defines allowable and unallowable costs in order to identify expenses that are reasonable and necessary when an economical and efficient provider cares for Medicaid recipients. The primary objective of the cost reporting process is to determine fair and reasonable reimbursement rates. To achieve this objective, HHSC [~~TXMHMR~~] compiles a rate base consisting, if possible, only of allowable cost information. When HHSC [~~TXMHMR~~] classifies a particular type of expense as unallowable for purposes of compiling a rate base, the classification does not mean that individual providers must not make expenditures of this type. Allowable costs included in the rate base reflect only the costs and maximum reimbursement rates associated with an economical and efficient operator. Providers[~~TXMHMR Medicaid-contracted providers~~] must report costs in accordance with the generally accepted accounting principles (GAAP) of the American Institute of Certified Public Accountants. However, if particular HHSC [~~TXMHMR~~] cost reporting requirements conflict with GAAP, with Internal Revenue Service requirements, or with other authorities, the HHSC [~~TXMHMR~~] requirements take precedence for [~~Medicaid~~] provider cost reporting purposes.

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

(1) Allowable costs--Those expenses that are reasonable and necessary in the normal conduct of operations relating to recipient care in an ICF/MR. Whenever possible, only allowable costs are included in the rate base.

(A) The word "reasonable" applies to the amount expended. The test of reasonableness is that the amount expended does not exceed the cost which would be incurred by a prudent business operator seeking to contain costs.

(B) The word "necessary" applies to the relationship of the cost to the provision of care. To qualify as a necessary expense, a cost must be one that is usual and customary in the operation of an ICF/MR, and must meet all of the following requirements.

(i) The expenditure is not for personal or other activities not specifically related to the provision of long-term care.

(ii) The cost does not appear on the list of specific unallowable costs.

(iii) The cost bears a significant relationship to client care. The test of significance in this case is whether there would be an adverse impact on the individual's health, safety, or general well-being if the expenditure were eliminated.

(iv) The expense was incurred in the purchase of materials, supplies, or services provided directly to the recipients or staff of individual ICF/MR in the conduct of normal operations relating to client care.

(v) The costs are not unallowable under other federal, state, or local laws or regulations.

(C) The phrase "normal conduct of operations relating to client care" applies to costs for, but not limited to, the following.

(i) Expenses for facilities, materials, supplies, or services not used by an ICF/MR solely for providing long-term client care. Whenever otherwise allowable costs are attributable partially to personal or other business interests and partially to ICF/MR client care, the latter portion may be allowed on a pro rata basis if the proportion used for ICF/MR client care is well-documented.

(ii) Related-party transactions. Allowable costs are those which result from arm's-length transactions involving unrelated parties. In related-party transactions, the allowable cost to the ICF/MR is the cost to the related party. Allowable costs in this regard are limited either to the actual purchase prices paid by the related party or to the usual and customary charges for comparable goods or services, whichever is less. Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. This affiliation or association can be based on common ownership, past or present mutual interests in long-term care or other types of enterprises, or family ties.

(2) Unallowable costs--Expenses that are not reasonable or necessary for the provision of client care in an ICF/MR, in accordance with the criteria specified in paragraph (1) of this subsection. Unallowable costs are not included in the rate base used for determining recommended reimbursement rates.

§355.454. Frequency of Reporting Costs.

(a) All state-operated provider agencies must annually submit full cost reports as directed by HHSC[~~TDMHMR~~] in accordance with Subchapter F of this chapter (relating to General Reimbursement Methodology for all TDMHMR Medical Assistance Programs) and §355.452 of this title (relating to Cost Reporting Procedures).

(b) Non-state operated facilities must submit cost report information as directed by HHSC[~~TDMHMR~~] in accordance with Subchapter F of this chapter(relating to General Reimbursement Methodology for all TDMHMR Medial Assistance Programs).

(1) Except for facilities selected to file a full cost report for the same reporting period, all non-state operated facilities will annually submit direct service cost reports according to §355.452 of this title relating to Cost Reporting Procedures) and §355.457 of this title (relating to Fiscal Accountability).

(2) Beginning with the provider agencies' 1999 fiscal year, and every three years thereafter, a sample of non-state operated facilities will be required to submit full cost reports according to §355.452 of this title (relating to Cost Reporting Procedures) and §355.458 of this title (relating to Rebasing the Non-State Operated Facility Modeled Rates).

§355.456. Rate Setting Methodology.

(a) Types of facilities. There are two types of facilities for purposes of rate setting: state-operated and non-state operated. Non-state operated facilities are further divided by classes that are determined by the size of the facility.

(b) Classes of non-state operated facilities. There is a separate set of reimbursement rates for each class of non-state operated facilities, which are as follows.

(1) Large facility--A facility with a Medicaid certified capacity of 14 or more as of the first day of the full month immediately

preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Medium facility--A facility with a Medicaid certified capacity of nine through 13 as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(3) Small facility--A facility with a Medicaid certified capacity of eight or fewer as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(c) State-operated facilities. There are no classes of state-operated facilities. State-operated facilities are reimbursed on a facility-based per diem rate that is determined by each facility's allowable costs, inflated forward to the rate period. The reimbursement rates include residential, day, and comprehensive medical services.

(d) Reimbursement rate determination for non-state operated facilities. HHSC will adopt the reimbursement rates for non-state operated facilities [~~The department will present the reimbursement rates for non-state operated facilities to the Texas MHMR Board for approval and then to the Texas Health and Human Services Commission for final adoption~~] in accordance with Subchapter F of this chapter (relating to General Reimbursement Methodology for all Medical Assistance Programs) and this subchapter.

(1) The initial modeled rates for calendar year 1997 are set according to paragraph (7) of this subsection.

(2) Annual rates for the time period between the years that modeled rates are rebased are set by inflating the direct service portion of the previous year's rates by the Personal Consumption Expenditures (PCE) Chain-Type Index[~~IPD-PCE~~] as defined in Subchapter F of this chapter. These rates are uniform by class of facility and client level-of-need, and determined prospectively and annually.

(3) In the year 2000, the models from which the rates are based are analyzed to determine if rebasing is necessary for the rates paid in the year 2001. The models will be analyzed every three years thereafter to determine if rebasing is necessary.

(4) Reimbursement rates combine residential and day program services, i.e., payment for the full 24 hours of daily service.

(5) Reimbursement rates are differentiated based on client level-of-need [~~as outlined in 25 TAC Chapter 406, Subchapter E~~]. The levels of need are intermittent, limited, extensive, pervasive, and pervasive plus.

(6) Modeled rates are rebased according to §355.458 of this title (relating to Rebasing the Non-State Operated Facility Modeled Rates).

(7) The modeled rates are based on cost components deemed appropriate for economically and efficiently operated services. The determination of these components is based on a combination of data including, but not limited to, historical costs and operational information collected from a representative sample of ICF/MR providers. In the year 2000 and every three years thereafter, an advisory panel consisting of [~~service~~] providers, advocates, and HHSC [~~department personnel~~], and an independent consultant retained by HHSC[~~TDMHMR~~] analyzes available information regarding historical cost and operational data and level-of-need assessment to determine if revisions to the models are necessary. HHSC will review the analysis in setting rates.[~~TDMHMR will use the analysis to make recommendations regarding rates to the Texas MHMR Board.~~]

(e) Rate determination for state-operated facilities. HHSC will adopt the reimbursement rates for state-operated facilities[~~The department will present the reimbursement rates for state-operated facilities to the Texas MHMR Board for approval and then to the Texas Health and Human Services Commission for final adoption~~] in accordance with Subchapter F of this chapter (relating to General Reimbursement Methodology for all TDMHMR Medical Assistance Programs) and this subchapter. Rates are facility specific, determined prospectively, and cost related. A per diem rate for each facility, which is based on the total projected allowable costs for selected cost centers, is divided by the total days of service the facility delivered either in the rate period or in the cost reporting period.

(1) Reimbursement rates for state-operated facilities [~~ICFs/MR~~] are based on the most current costs reported on their cost reports.

(2) Costs for each facility are divided into three groups: salaries and benefits, comprehensive medical, and other. These costs are inflated by the factors identified in §355.704 of this title (relating to Determination of Inflation Indices). Each facility will have its own per diem rate.

(3) Reimbursement rates for newly certified state-operated facilities [~~ICFs/MR~~] are based on a pro forma model. The pro forma rate is the average of all available similarly sized state-operated facilities' per diem rates for that particular rate year. Newly certified facilities will be required to submit three-month cost reports to reflect costs incurred during the first 90 days of certified operation. These costs will be used to determine the facility's specific per diem rate within 180 days of certification.

(f) Experimental class. HHSC[~~TDMHMR~~] may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless HHSC [~~the Texas MHMR Board, THHSC,~~] and the Health Care Financing Administration (HCFA) approve the experimental methodology.

§355.457. Fiscal Accountability.

(a) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the non-state operated facility reimbursement rates.

(b) Annual reporting. Fiscal accountability will consist of the annual reporting of direct service costs from all non-state operated providers. The data will be collected on a cost report designed by HHSC [~~TDMHMR or its designee~~] in accordance with §355.452 of this title (relating to Cost Reporting Procedures).

(1) Direct service costs [~~are defined to~~] include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care staff, QMRPs, registered nurses, and licensed vocational nurses. Direct service costs include: costs related to wage rates, benefits, payroll taxes, contracts for direct services, and direct service supervision information. Accrued leave (sick or annual) can only be considered [~~counted as~~] a direct service cost if the employee has a right to the cash value of that leave upon termination.

(2) The provider is responsible for submission of the fiscal accountability cost report to HHSC, and payment of amounts to TDMHMR in accordance with subsection (c) [~~(e)~~](2) and (3) of this section, regardless of whether the provider contracts with another entity for the management or operation of the ICF/MR. If the provider

contracts with another entity for the management or operation of the ICF/MR, the provider must report the specific direct services costs of that entity as required in the cost report instructions and not the amount for which the provider is contracting for the entity's services. For staff whose duties include work other than the provision of direct services, the proportion of work that is spent on direct services may be included in the direct service costs. The proportion of their salary and benefits that is [~~are~~] compensation for direct services work can be included in the direct service cost report. If the staff providing direct services is an owner, operator, or a related party as defined in §355.701(a)(9) of this title (relating to General Reimbursement Methodology for All TDMHMR Medical Assistance Programs), the salary and benefits must be the lesser of the actual wages and benefits paid or the wages and benefits for a comparable staff person assumed in the model. The facility must have a procedure that specifies how direct service work time is allocated.

(3) The direct service portions of the current rate model are inflated on an annual basis as specified in §355.456(d)(2) of this title (relating to Rate Setting Methodology).

(4) TDMHMR will place a [~~A~~] vendor hold [~~will be placed~~] on a prior owner at a change of ownership which results in the execution of a new provider agreement. The prior owner must [~~will~~] submit a fiscal accountability report to HHSC for the current reporting period. Upon receipt of an acceptable fiscal accountability report and resolution of any outstanding balances, the vendor hold will be released.

[~~(c) In 1997, providers are required to submit direct service costs on a report for a uniform three-month period of the year, as selected by the department. The report will reflect the provider's actual direct costs for the three-month period. The direct service costs will be compared to the "direct service cost" component of the modeled rates. In instances in which a provider's actual direct service costs, as captured by the quarterly cost reports, are less than 85% of the direct service revenues in the model, TDMHMR will require additional reporting of costs and other information from the provider.~~

~~(d) Reimbursement rate determination for non-state operated facilities. The department will present the reimbursement rates for non-state operated facilities to the Texas MHMR Board for approval and then to the Texas Health and Human Services Commission for final adoption in accordance with Subchapter F of this chapter (relating to General Reimbursement Methodology for all Medical Assistance Programs) and this subchapter.~~

~~(1) report more detailed financial information;~~

~~(2) Annual rates for the time period between the years that modeled rates are rebased are set by inflating the direct service portion of the previous year's rates by the IPD-PCE as defined in Subchapter F of this chapter. These rates are uniform by class of facility and client level-of-need, and determined prospectively and annually.~~

~~(3) submit to a utilization review of all services provided; and/or~~

~~(4) submit to a detailed audit of all relevant financial records.~~]

(c) [~~(e)~~] HHSC [~~The department~~] will require providers to report all direct costs incurred in their annual fiscal year. HHSC [~~The department~~] will compare the reported direct service costs to the direct service cost component of the modeled rates.

(1) Paragraph (2) of this subsection, concerning the fiscal accountability repayment, applies to that portion of the provider's fiscal year that occurs after April 5, 1998. Paragraph (3) of this subsection, concerning the fiscal accountability repayment, applies to that portion of the provider's fiscal year that begins on or after January 1, 1999.

(2) The total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units paid for services provided during the reporting period.

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

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

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

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

(3) The total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units paid for services provided during the reporting period.

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

(B) Providers whose direct service costs are less than 85% of the direct service revenues will be required to pay to TDMHMR the difference between the direct service costs and 95% of the direct service revenues.

(C) Providers whose direct service costs are between 85% and 90% of the direct service revenues will be required to pay to TDMHMR 75% of the difference between the direct service costs and 90% of the direct service revenues.

(4) Providers will be notified of their repayment status within 90 days of submitting their cost reports. A provider's repayment status may change as a result of the desk reviews or outside audits of cost reports, or by adjustments to claims paid to the provider for services provided in the cost reporting period. Providers will submit the repayment amount within 60 days of notification.

(5) Repayment will be collected from the following:

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

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

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

(6) These entities will be jointly and severally liable for any repayment due to TDMHMR. Failure to repay the amount due when notified may result in a vendor hold on all of the facilities included in the cost report.

(7) Providers who wish to appeal the requirement to make payment to TDMHMR in accordance with this section may do so in accordance with 25 TAC Chapter 409, Subchapter B.

§355.458. Rebasing the Non-State Operated Facility Modeled Rates.

For the rate year beginning January 1, 2001, and at least every three years thereafter HHSC [~~TDMHMR~~] will assess the viability of the non-state-operated modeled rates using the following process:

(1) HHSC [~~TDMHMR~~] will seek to obtain a consultant to conduct an independent, detailed analysis of cost and operational information for a sample of ICF/MR service providers throughout the state in accordance with Texas Government Code, Chapter 2254.

(2) Site visits will be made to each of the sample providers to collect cost data and discuss operations.

(3) An advisory panel consisting of service providers, advocates, and HHSC and TDMHMR [~~department~~] personnel will analyze available information regarding historical cost and operational data and level-of-need assessment. HHSC [~~TDMHMR~~] will use the analysis to adjust [~~make recommendations to the Texas MHMR Board for adjusting~~] the rates or rebase [~~rebasing~~] model-based rates.

(4) HHSC [~~TDMHMR~~] will make [~~recommend~~] adjustments to rate factors if required, based on the results of the analysis of the sample of cost and operational information.

(5) Revised rates, as well as the rationale supporting the rates, will be approved by HHSC [~~presented to the Texas MHMR Board for approval and implementation. Final approval of the rates will be provided by THHSC~~].

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008380
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 424-6576

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SUBCHAPTER F. GENERAL REIMBURSEMENT METHODOLOGY FOR ALL MEDICAL ASSISTANCE PROGRAMS

1 TAC §§355.701-355.709, 355.722, 355.723, 355.732, 355.733, 355.741-355.743, 355.761, 355.773, 355.775, 355.781

Statutory Authority

The amended rules are proposed under §531.021(b), Government Code, which requires HHSC to adopt reasonable rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program ; and §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of HHSC under Chapter 531, Government Code.

The proposed amended rules implement §531.021(b), Government Code, concerning the adoption of rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, and §32.0281, Human Resources Code, concerning the adoption of rules regarding Medicaid reimbursement rates.

§355.701. Definitions and General Specifications.

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

(1) Cost Report--Any cost data or financial information submitted by a provider to the Texas Health and Human Services Commission (HHSC)[~~TDMHMR~~].

(2) Direct Services Cost Survey--Annual survey conducted by Texas Health and Human Services Commission (HHSC)[~~TDMHMR~~] in which cost data related to direct services is submitted by providers.

(3) Full Cost Report--Cost data required by Texas Health and Human Services Commission (HHSC)[~~TDMHMR~~] that includes all costs of providing services including direct care costs, administration, facility costs, and all other operating costs relevant to the provision of services.

(4) GAAP--Generally accepted accounting principles.

(5) GAAS--Generally accepted auditing standards.

(6) HHSC-The Texas Health and Human Services Commission or its designee

(7) [~~(6)~~] Person--An individual, partnership, corporation, association, governmental subdivision or agency, or a public or private organization of any character.

(8) [~~(7)~~] Provider--Any person with whom Texas Department of Mental Health and Mental Retardation TDMHMR has a provider agreement.

(9) [~~(8)~~] Provider agreement--Any written agreement that obligates TDMHMR to pay money to a person for goods or services under the Title XIX Medical Assistance Program.

(10) [~~(9)~~] Related Party--Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other.

(11) [~~(10)~~] TDMHMR--The Texas Department of Mental Health and Mental Retardation or its designee.

(b) TDMHMR[~~The Texas Department of Mental Health and Mental Retardation (TDMHMR)~~] reimburses [~~Texas Medicaid contracted~~] providers for medical assistance provided to Medicaid recipients. HHSC[~~The Texas Mental Health and Mental Retardation Board~~] determines prospective uniform reimbursement rates paid to providers>at least annually. When program specific rules are in conflict with sections of this subchapter, the program specific rules shall prevail.

§355.702. Method for Cost Determination.

(a) Cost determination rules. Except when otherwise specified under this chapter[~~title~~], HHSC[~~the TDMHMR~~] follows the requirements set forth in the Generally Accepted Accounting Principles (GAAP), the Generally Accepted Auditing Standards (GAAS), and federal circular OMB A-87, Attachment B, and in subsections (b)-(j) of this section as the cost determination rules for providers of services to Medicaid recipients. In cases in which cost reporting rules differ from GAAP, GAAS, IRS, or other authorities, the individual program rules take precedence for provider cost-reporting purposes.

(b) Cost reports and cost surveys. Cost reports, when used in this subchapter, will include all types of cost data requested by the

HHSC[~~TDMHHMR~~] including, but not limited to, the Time and Financial Information (TAFI), cost surveys of direct service costs, cost reports, and special cost studies. Cost report due dates will be included with the request for cost data or on the report form.

(c) Cost report due dates.

(1) Cost Reports. All [~~contracted~~] providers must submit cost reports to the HHSC[~~Texas Department of Mental Health and Mental Retardation (TDMHHMR)~~] in a manner prescribed by HHSC[~~the department~~]. HHSC[~~The Department~~] will provide adequate notice and reasonable timelines[~~time lines~~] for the completion of requested reports. The due date of the cost report is included in the cost report instructions. Failure to submit cost reports by the deadline could result in sanctions[~~administrative penalties~~] against the provider.

(2) Amended Cost Reports. HHSC[~~TDMHHMR~~] accepts amended cost reports submitted on the request of the provider until 45 days after the due date. Since this is a prospective reimbursement system without a provision for reconciliation, amended cost reports filed after this 45 day extension have no effect on the rate and are not accepted. Amended cost report information that cannot be verified within ten working days of receipt will not be used in rate determination.

(d) Exclusions and adjustments. In addition to the exclusions and adjustments made during desk reviews and on-site audits, HHSC[~~TDMHHMR~~] may exclude or adjust certain expenses in the cost report data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur. These adjustments include, but are not necessarily limited to, revenue offsets, fixed capital asset cost limits, percentile cap limits on administration and facility costs, occupancy adjustments, and cost projections. As specified in §355.705 of this title (relating to Notification), providers will be notified about exclusions and adjustments to their reported expenses.

(e) Cost inflation. HHSC[~~TDMHHMR~~] projects expenses in the cost report data base to account for cost inflation between the reporting period and the prospective rate period. The HHSC[~~department's~~] procedures for determining inflation indices to account for cost inflation between the reporting period and the prospective rate period are specified in §355.704 of this title (relating to Determination of Inflation Indices).

(f) Other adjustments. Notwithstanding reimbursement methodologies described in program-specific rules, HHSC[~~TDMHHMR~~] may recommend reimbursement adjustments as specified in §355.706 of this title (relating to Adjusting Reimbursement).

(g) Projecting cost per unit for programs that are cost-based. After making appropriate exclusions and adjustments, HHSC[~~TDMHHMR~~] uses the adjusted cost report data to project the cost per unit of service during the prospective rate period.

(h) Public hearing. HHSC[~~TDMHHMR~~] must hold a public hearing before reimbursement rates are set[~~the Texas Mental Health and Mental Retardation Board sets payment rates~~]. The purpose of the hearing is to give interested persons an opportunity to comment on HHSC's[~~the department's~~] proposed rates. HHSC[~~The department~~] must provide notice of the hearing to the public; and at least ten days before the hearing takes place, HHSC[~~the department~~] must make material pertinent to the proposed rates available to the public. At a minimum, this material must include HHSC's[~~the department's~~] proposed rates, the inflation rates used to determine them, and the impact on rates of the major cost limits applied under the provisions of subsection (d) of this section. HHSC[~~TDMHHMR~~] must furnish this material to anyone who requests it from the HHSC[~~TDMHHMR~~] division responsible for rate recommendations. [~~After the hearing, TDMHHMR must provide the Texas Mental Health and Mental Retardation Board with a written summary of the comments made during the public hearing.~~]

(i) Pro forma analysis. If, in the professional opinion of HHSC[~~TDMHHMR~~] staff, an insufficient number of accurate, full-year cost reports is submitted or there is information that causes doubt about the accuracy or applicability of the available data, HHSC[~~the Texas Mental Health and Mental Retardation Board~~] may promulgate payment rates based on a pro forma analysis by TDMHHMR. A pro forma analysis is defined as an item-by-item calculation of the essential expenses necessary for an economic and efficient provider to operate. The pro forma analysis must be based on all the information available, including valid cost report data and survey data, in a way that ensures that the resultant rates are sufficient to support an economical and efficient provider. The analysis may involve assumptions about the salary of the administrator, staff salaries, employee benefits and payroll taxes, facility depreciation, mortgage interest, dietary expenses, and other facility and administration expenses. To determine the cost per unit of service, HHSC[~~TDMHHMR~~] adds all the pro forma expenses and divides the total by the estimated number of units of service that a fully operational provider is likely to provide. When HHSC[~~TDMHHMR~~] determines that sufficient and reliable cost report data have become available, HHSC[~~the Texas Mental Health and Mental Retardation Board~~] may replace pro forma rates with cost report based rates.

§355.703. Basic Objectives and Criteria for Review of Cost Reports.

(a) HHSC[~~TDMHHMR~~] conducts desk reviews of all provider cost reports to ensure that the financial and statistical information submitted in the cost reports conforms to all applicable rules and instructions.

(b) The basic objective of [~~TDMHHMR~~] desk reviews is to verify that each provider's cost reports:

(1) display financial and statistical information in the format required by HHSC[~~TDMHHMR~~];

(2) report expenses in conformity with HHSC's[~~TDMHHMR's lists of~~] allowable and unallowable costs; and

(3) follow generally accepted accounting principles except as otherwise specified in HHSC's[~~TDMHHMR's lists of~~] allowable and unallowable costs, or as otherwise permitted in the case of governmental entities operating on a cash basis.

(c) HHSC[~~TDMHHMR~~] verifies the information specified in subsection (b) of this section by:

(1) comparing each provider's reported costs to:

(A) past patterns of expenditures for similar services;

(B) the results of previous on-site audits;

(C) normal operating cost relationships; and

(D) industry average costs;

(2) reviewing each provider's reported costs to search for:

(A) reported unallowable costs;

(B) omitted allowable costs; and

(C) overstated or understated allowable costs;

(3) checking for completion of required information;

(4) checking the format for proper cost classification;

(5) checking for mathematical accuracy; and

(6) adjusting improperly prepared reports.

(d) HHSC[~~TDMHMR~~] may conduct on-site audits of cost reports.

(e) Cost of out-of-state audits. As specified in subsection (a) of this section, HHSC[~~TDMHMR~~] conducts desk reviews of all the cost reports that it receives. HHSC[~~The department~~] also conducts on-site audits of provider records and cost reports. Although the number of on-site audits performed each year may vary, HHSC[~~the department~~] seeks to maximize the number of on-site audited cost reports available for use in its cost projections. Whenever possible, the records necessary to verify information submitted to HHSC[~~TDMHMR~~] on Medicaid cost reports, including related party transactions and other business activities engaged in by the provider, must be accessible to HHSC[~~TDMHMR audit staff~~] in the state of Texas. When records are not available to HHSC[~~TDMHMR audit staff~~] within the state, the provider must pay the actual costs for HHSC[~~TDMHMR~~] staff to travel and review the records out of state. If a provider fails to reimburse HHSC[~~TDMHMR~~] for these costs within 60 days of the request for payment, HHSC will notify TDMHMR to place the provider on vendor hold[~~TDMHMR will place a hold on the vendor payments until the costs are paid in full. As specified in §355.705 of this title (relating to Notification), providers will be notified about exclusions and adjustments to reported expenses made during desk reviews and on-site audits~~].

§355.704. Determination of Inflation Indices.

(a) Function and types of indices. To account for cost inflation between the reporting period and the prospective rate period as specified in §355.702 of this title (relating to Method of Cost Determination[~~Methodology~~]), Health and Human Services Commission (HHSC)[~~the Texas Department of Mental Health and Mental Retardation (TDMHMR)~~] uses a general cost inflation index and several item-specific and program-specific inflation indices.

(b) General cost inflation index. Personal Consumption Expenditures (PCE) Chain-Type Index[~~For all medical assistance programs TDMHMR uses the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE)~~] as its general cost inflation index. The PCE[~~IPD-PCE~~] is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the U.S. Department of Commerce. To project or inflate costs from the reporting period to the prospective rate period, HHSC[~~TDMHMR~~] uses the lowest feasible PCE[~~IPD-PCE~~] forecast consistent with the forecasts of nationally recognized sources available to HHSC[~~TDMHMR~~] at the time rates are prepared for public dissemination and comment.

(c) Item-specific and program-specific inflation indices. When HHSC[~~TDMHMR~~] can obtain item-specific or program-specific inflation indices for cost report line items such as wages, facility depreciation, and lease appreciation, HHSC[~~the department~~] uses these specific indices in place of the general cost inflation index specified in subsection (b) of this section. The specific indices that HHSC[~~the department~~] uses include the following:

(1) Wage and benefit inflation rates for TDMHMR[~~state school~~] ICF-MR employees are determined by the Texas Legislature and Department merit policy.

(2) The inflation index for facility depreciation and lease appreciation is limited by federal regulations (OBRA 1984, COBRA 1985) that require the use of no more than one-half of the Consumer Price Index For All Urban Consumers (CPI-U) for depreciated ICF-MR facilities that change ownership after July 18, 1984. All leased ICF-MR facilities are inflated by no more than one-half of the CPI-U compounded annual rate of change for the most recent consecutive two year period for which information is available at the time reimbursement rates are determined. Other medical assistance programs use the PCE[~~IPD-PCE~~] inflation index to project facility lease costs.

(3) The medical care CPI-U is used as the inflation index for the state-operated facilities'[~~state school ICFs/MR~~] comprehensive medical cost center. To project costs from the reporting period to the prospective rate period, HHSC[~~TDMHMR~~] uses the lower of the two medical care CPI-U forecasts reported by Data Resources Incorporated and Wharton Econometric Forecasting Associates.

§355.705. Notification.

(a) HHSC[~~TDMHMR~~] mails notification of the exclusions and adjustments to reported expenses. HHSC[~~TDMHMR~~] mails notices of desk review exclusions and adjustments within ten working days after entering them in the cost report data base. The notice consists of a letter to the provider and a one page desk review adjustment sheet that specifies:

(1) the line items on the cost report that have been adjusted or excluded;

(2) the amount of each adjustment or exclusion; and

(3) the principal reason for each adjustment, capitation, or exclusion.

(b) HHSC[~~TDMHMR~~] also furnishes providers with written reports of the results of on-site audits. HHSC[~~TDMHMR~~] mails each on-site audit report within 30 days after the final exit interview with the provider. An exit interview is final when HHSC[~~TDMHMR~~] has received, reviewed, and analyzed all documentation from the provider pertinent to the scope of the audit. The on-site audit report consists of a [~~multiple page professional~~] report prepared by HHSC[~~TDMHMR~~] to enumerate the results of an on-site audit. Each on-site audit report includes a specification of:

(1) cost report line items that have been adjusted or excluded;

(2) the amount of each adjustment or exclusion; and

(3) the principal reason for each adjustment or exclusion.

(c) HHSC[~~TDMHMR~~] mails on-site audit reports and notices of desk review exclusions and adjustments to the address provided by the provider on its[~~their~~] cost report.

(d) A provider may also submit a written request for HHSC[~~TDMHMR~~] to provide additional information about exceptions and adjustments to the provider's cost reports, including citations of the laws or regulations that constitute the grounds for the exceptions and adjustments. HHSC[~~TDMHMR~~] must respond to such requests in writing within 30 calendar days of receiving the request.

§355.706. Adjusting Reimbursement.

(a) In conducting reimbursement reviews for adjustments HHSC[~~the Texas Department of Mental Health and Mental Retardation (TDMHMR)~~] takes into consideration changes in laws, rules, regulations, policies, guidelines, or economic factors which will have a demonstrable material impact on most contracted providers' costs of providing services meeting federal and state standards.

(1) HHSC[~~TDMHMR~~] may recommend adjustments to reimbursement when federal or state laws, rules, regulations, policies, or guidelines are adopted, promulgated, judicially interpreted, or otherwise changed in ways that affect allowable costs. The law, rule, regulation, policy, or guideline change must result in necessary changes in allowable costs that:

(A) affect most, if not all, [~~contracted~~] providers; and

(B) require [~~contracted~~] providers to take definitive action to incur additional allowable costs not included in the cost data base used to determine reimbursements and which would not otherwise be covered in reimbursements.

(2) HHSC[~~TDMHMR~~] may recommend adjustments to reimbursement when it can be clearly demonstrated that changes in economic factors will result in changes in allowable costs. The changes in economic factors must result in changes in allowable costs that:

(A) affect most, if not all, providers; and

(B) are allowable cost changes that the providers have little or no control over and are allowable costs that are not included in the cost data base used to determine reimbursements and which would not otherwise be covered in reimbursements.

(b) HHSC[~~TDMHMR~~] may recommend adjustments to reimbursement for the reasons stated in subsection (a)(1) of this section at the earliest feasible opportunity in order for the adjustment to become effective on the effective date of the federal or state laws, rules, regulations, policies, or guidelines. In the case of Medicaid state plan program reimbursements, the adjustments will not be effective until after the federal requirements for notice are met.

(c) HHSC[~~TDMHMR~~] may recommend adjustments to reimbursement when federal or state funding is changed in ways that affect the available funding for programs.

§355.707. Reviews and Administrative Hearings.

(a) General requirements. A provider who disagrees with an exclusion or adjustment made during a desk review or on-site audit of that provider, the determination of an inflation index, or a rate adjustment made in response to new legislation, regulations or economic factors under the provisions of this subchapter (relating to General Reimbursement Methodology for all Texas Department of Mental Health and Mental Retardation Medical Assistance Programs) must follow the procedures for informal reviews and administrative hearings set forth in this section to appeal the action.

(b) Informal review. An informal review is conducted according to the following procedures:

(1) If a provider disagrees with an exclusion or adjustment made during a desk review or on-site audit of that provider and the provider wants to appeal the exclusion or adjustment, the provider must submit a written request for an informal review within 30 calendar days of receiving HHSC's[~~TDMHMR's~~] written notification of the exclusion or adjustment.

(2) If a provider disagrees with HHSC's[~~TDMHMR's~~] determination of an inflation index or with a rate adjustment made in response to legislation, regulations or economic factors, and the provider wants to appeal the inflation index or rate adjustment, the provider must submit a written request for an informal review within 30 calendar days of the setting of rates by the HHSC[~~TDMHMR Board~~]. An informal review requested under the provisions of this paragraph may only consider whether the requirements of this subchapter and subchapter D[~~chapter~~] were followed in developing the rates.

(3) A written request for an informal review must be submitted to HHSC[~~TDMHMR Medicaid Administration~~].

(4) On receipt of a timely request for an informal review, HHSC[~~TDMHMR~~] will appoint a review panel, to be composed of no less than two persons not involved in prior reviews of the cost report. The panel will arrange a meeting at the earliest possible date convenient to both the provider and the panel members. At the meeting, the provider may present any information it considers pertinent to its position. The review panel will consider information presented by the provider and any information from HHSC[~~TDMHMR~~] that the panel deems necessary to reach a decision. Within 30 calendar days from the meeting, the panel will send the provider the panel's written decision. The decision will be sent by certified mail, return receipt requested.

(c) Administrative hearings. If a provider disagrees with the decision reached in an informal review and the provider wants to appeal the decision, the provider must request an administrative hearing in accordance with 25 TAC Chapter 409, Subchapter B (Adverse Actions) within 15 days after receiving the review panel's decision.

(d) Rate not stayed. An informal review or administrative hearing requested under the provisions of this section will not stay the determination, adoption, or implementation of reimbursement rates by HHSC[~~TDMHMR~~].

§355.708. Allowable and Unallowable Costs.

(a) General principles. Allowable and unallowable costs, both direct and indirect, identify expenses which are reasonable and necessary to provide contracted services and are consistent with federal and state laws and regulations. If a particular type of expense is classified as unallowable, then the classification means only that the expense will not be included in the database for reimbursement determination purposes because the expense is not considered reasonable and/or necessary. The classification does not mean that individual contracted providers may not make the expenditure. The description of allowable and unallowable costs is designed to be a general guide and to clarify certain key expense areas. The primary determinant of allowability is whether or not the cost is consistent with the criteria set forth in GAAP and federal circular OMB A-87, Attachment B. This circular is not comprehensive, and the failure to identify a particular cost does not necessarily mean that the cost is an allowable or unallowable cost.

(b) Generally accepted accounting principles. Except as otherwise specified by the cost determination rules of this chapter and subchapter D[~~chapter~~], cost report instructions, or policy clarifications, cost reports should be prepared consistent with generally accepted accounting principles (GAAP) which are those principles approved by the American Institute of Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply in the preparation of the cost report. In cases in which cost reporting rules differ from GAAP, IRS, or other authorities, HHSC[~~TDMHMR~~] rules take precedence for provider cost reporting purposes.

(c) Allowable costs. Allowable costs are expenses, both direct and indirect, that are reasonable and necessary, as defined in paragraphs (1) and (2) of this subsection, and which are required in the normal conduct of operations to provide [~~contracted client~~] services meeting all pertinent state and federal requirements.

(1) "Reasonable" refers to the amount expended. The test of reasonableness includes the expectation that the provider seeks to minimize costs and that the amount expended does not exceed what a prudent and cost-conscious buyer pays for a given item or service.

(2) "Necessary" refers to the relationship of the cost, direct or indirect, incurred by a provider in the provision of client care. Necessary costs are direct and indirect costs appropriate in developing and maintaining the required standard of operation for providing client care in accordance with the contract, and with state and federal regulations.

(3) Direct service costs are those costs which are incurred by a provider which are definitely attributable to the operation of providing contracted client services. Whether or not a cost is considered a direct service cost depends upon the specific rules that define the methodology for each program and the contracted client services covered by the program.

(4) Indirect costs are those shared costs which benefit, or contribute to, the operation of providing contracted services, other business components, or the overall entity with which [~~the~~] TDMHMR has contracted. Unless defined otherwise in program methodology rules, indirect costs must be allocated, directly or as a pool of costs, across those business components sharing in the benefits of those costs.

(d) Unallowable costs. Unallowable costs are expenses that are not reasonable or necessary to the provision of contracted services. The placement as an allowable cost on a cost report of a cost which has been determined to be unallowable may constitute an administrative contract violation and/or may constitute fraud.

(e) Specifications for allowable and unallowable costs. The primary criteria of allowability is whether or not the cost meets the definitions as set forth in the federal circular OMB A-87, Attachment B. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles in subsections (a) and (b) of this section and/or in circular OMB A-87, Attachment B. The following are exceptions, or elaborations, to circular OMB A-87, Attachment B and subsection (b) of this section.

(1) Accounting and audit fees. Except for Schedule C or Partnership returns related to a contracted provider, expenses for preparation of personal tax returns, and production or[~~and/or~~] distribution of annual reports for stockholders or investors are not allowable. Expenses for the preparation of audit/management reports for use by management staff or board members in directing or managing provider operations are allowable.

(2) Legal expenses. Legal retainers are not allowable in and of themselves. Legal costs associated with the provision of client services are allowable. Legal costs associated with litigation between the provider and a governmental entity are unallowable. Legal costs associated with any other unallowable cost are also unallowable.

(3) Depreciation and use allowances/equipment and other capital expenditures. Purchases of equipment with an asset value at, or more than, $2,500 and an estimated useful life of more than one year must be depreciated or amortized, using the straight line method. In determining whether to expense or depreciate a purchased item, a contracted provider may expense any single item costing less than $2,500 or having a useful life of one year or less. Depreciation and amortization expenses for unallowable assets and costs are also unallowable, including amounts in excess of those resulting from the straight line method, capitalized lease expenses in excess of actual lease payments, and goodwill or any excess above the actual value of physical assets at the time of purchase.

(4) Tax expense and credits. Income taxes (federal, state and local) are not allowable. Taxes in connection with financing, refinancing, or refunding operations, such as taxes on the issuance of bonds, property transfers, issuance or transfer of stocks are unallowable as a tax expense. Expenses based on tax fines or tax penalties, and any associated interest, are not allowable.

(5) Grants, gifts, and income from the endowments and operating revenue.

(A) Grants and contracts from thefederal government such as transportation grants, United States Department of Agriculture grants, education grants, Housing and Urban Development grants, and Community Service Block Grants, should be offset, prior to reporting on the cost report, against the particular cost or group of costs for which the grant was intended.

(B) Contracts, grants, gifts, and income from endowments from private sources, or state and/or local governments, used to purchase allowable program items should not be offset by the contracted provider prior to reporting on the cost report. All such funds which are properly allocable to the cost report should be reported on a contracted provider's cost report, as well as any allowable costs to which the unrestricted funds were applied.

(C) Nonroutine revenues such as income from operations not associated with providing contracted services should be offset or reduced by the related expenses prior to reporting the revenue on the cost report. Expenses related to providing these types of non-contracted operations are unallowable costs. If nonroutine operating expenses (including overhead costs) generate nonroutine operating revenue, in excess of nonroutine operating revenues, the net nonroutine operating expenses are not allowable costs.

(6) Losses resulting from theft or embezzlement. Losses resulting from theft or embezzlement of property or funds of clients held in trust by the contracted provider are not allowable costs.

(7) Direct reimbursement. Any expenses directly reimbursable to the contracted provider which are considered outside the reimbursement payment system are not allowable costs.

(8) Charity or courtesy allowance. A charity allowance is a reduction in normal charges due to the indigence of the client or resident. A courtesy allowance is a reduction in charges granted as a courtesy to certain individuals, such as physicians and clergy. These allowances themselves are not costs since the costs of the services rendered are already included in the contracted provider's costs.

(9) Partial allocation of expenses for items not used entirely in the provision of contracted services. Whenever otherwise allowable expenses for facilities, materials, supplies, or services are attributable partially to personal or other business interests and partially to contracted services, the latter portion may be allowed on a pro rata basis if the proportion used for contracted services is well-documented.

(10) Related-party transactions. Allowable costs are those which result from arm's length transactions involving unrelated parties. In related-party transactions, the allowable cost is limited to the cost to the related party, either the actual purchase prices paid by the related party or to the usual and customary charges for comparable goods and services, whichever is less. Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. This can be based on common ownership, past or present mutual interests in any type of enterprise, or family ties.

(11) Fines assessed as administrative penalties and costs or interest associated with such penalties are unallowable.

(f) Medicaid as payor of last resort. Medicaid is the payor of last resort. Costs for which a recipient had Medicare Part A or B benefits, third-party payor benefits, vendor drug coverage, or any other benefits available are not allowable unless the provider can document that a provider of services was not accessible. At a minimum, the documentation must include a list of the providers contacted, date(s) of contact, person to whom spoken, telephone number, and reason for rejection.

§355.709. Revenues.

A provider must report revenues that reflect the activity of the provider as required by the cost report instructions of HHSC[~~TDMHMR~~].

§355.722. Reporting Costs by HCS Providers.

(a) On an annual basis, all state-operated HCS providers must submit cost reports as directed by HHSC [~~TDMHMR~~] or its designee in accordance with this subchapter.

(b) On an annual basis, non-state operated HCS [~~Non-state operated~~] providers must report direct service costs as specified in this subsection and in accordance with this subchapter.

(1) Direct service costs are defined to include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care workers, registered nurses, licensed vocational nurses, and other personnel who provide activities of daily living training and clinical program services. Direct [~~Reporting of direct~~] service costs include: costs related to wage rates, benefits, payroll taxes, contracts for direct services, and direct service supervision information. Accrued leave (sick or vacation) can only be considered [~~as~~] a direct service cost if the employee has a right to a cash value of that leave upon termination.

(2) For staff whose duties include work other than the provision of direct services, the proportion of work that is spent on direct services may be included in the direct service costs. The proportion of their salary and benefits that are compensation for direct services work can be included in the direct service cost report only to the extent that the salary and benefits for this direct service work must be the lesser of the actual wages and benefits or the wages and benefits for a comparable direct care workers assumed in the model. The provider [~~facility~~] must have a procedure that specifies how direct service work time is allocated.

(3) The direct service portions of the current rate model are inflated on an annual basis as specified in §355.723(g)(1) of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS)). This will increase the indirect part of the rate proportionately.

(4) On an annual basis, non-state operated providers will submit direct service cost data.

(5) Providers must report the following costs:

(A) Staff wages related to the delivery of direct services including residential assistance, day habilitation services, and the direct supervision of the delivery of these services.

(B) These costs may be either the HCS provider's actual expense or contracted expenditures.

(c) HHSC [~~TDMHMR~~] will select a sample of non-state operated HCS providers which will be required to submit a full and accurate account of all costs related to the provision of services for an HCS [~~a~~] provider's fiscal year in order to collect data for the analysis referenced in §355.723(g)(2) of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS)).

(d) HHSC [~~TDMHMR~~] will conduct desk audits of all full cost reports and/or direct service cost reports, and will conduct on-site reviews of a sample of providers submitting cost reports.

(e) Record keeping requirements. Each HCS provider must retain records according to HHSC's [~~the TDMHMR's~~] requirements. HCS providers [~~Providers~~] must ensure that records are accurate and sufficiently detailed to support the legal, financial, and statistical information provided to HHSC [~~TDMHMR~~].

(f) Noncompliance with record keeping requirements. Failure to maintain records that support the information submitted to HHSC [~~TDMHMR~~] constitutes a violation of the HCS provider contract.

(g) Allowable and unallowable costs. HCS providers [~~Providers~~] must complete cost reports in accordance with this subchapter.

(h) Certification. HCS providers [~~Providers~~] must certify the accuracy of cost reports submitted to HHSC [~~TDMHMR~~]. HCS providers [~~Providers~~] may be liable for civil and/or criminal penalties if the cost report is not completed according to HHSC [~~TDMHMR~~] requirements.

(i) Due date. HCS providers [~~Providers~~] must submit direct service cost reports no later than 90 calendar days after the end of the reporting period or 90 days after the date that HHSC [~~TDMHMR~~] mails the form to the HCS provider, whichever is later. HCS providers [~~Providers~~] must submit full cost reports no later than 90 days after the reporting period or 90 days after the date that HHSC [~~TDMHMR~~] mails the form to the HCS provider, whichever is later.

(j) Extension of due date. HHSC [~~TDMHMR~~] may grant extensions of due dates for good cause. Good cause is defined as one that the HCS provider could not reasonably be expected to control. An HCS [~~A~~] provider must submit a request for extension in writing to HHSC [~~TDMHMR~~] before the cost report due date. HHSC [~~TDMHMR~~] will respond to a request for extension within 10 working days of its receipt.

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

(l) Failure to submit requested data. Failure to submit acceptable cost data by the due date constitutes a violation of the HCS provider contract.

(m) Review of cost data. HHSC [~~TDMHMR~~] or its designee reviews each HCS provider's cost data to ensure that the financial and statistical information submitted conforms to all applicable rules and instructions. Forms that are not completed according to HHSC's [~~TDMHMR's~~] instructions or rules may be returned to the HCS provider for proper completion.

(n) On-site audits. TDMHMR or its designee performs a sufficient number of on-site financial audits to ensure the fiscal integrity of the HCS Programs. The number of on-site audits performed may vary.

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

(p) Access to records. Each HCS provider must allow access to HHSC [~~TDMHMR or its designee~~] to any and all records necessary to verify cost data submitted to HHSC [~~TDMHMR or its designee~~]. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the HCS provider that are directly or indirectly related to the provision of contracted services. Failure to allow inspection of pertinent records within 10 working days following written notice from HHSC [~~TDMHMR~~] constitutes a violation of the HCS provider contract. If the administrative office or other entity pertaining to a multi-contract operation refuses access to records, then the penalties are extended to all of the provider's entities having Medicaid contracts with TDMHMR. Additional rules regarding access to records that are out-of-state may be found in §355.702 of this title (relating to Methods for Cost Determination).

(q) Reviews of exclusions or adjustments. An HCS [~~A~~] provider who disagrees with HHSC's [~~TDMHMR's~~] exclusion or adjustment of items in cost reports may request an informal review

and, when appropriate, an administrative hearing as specified in §355.7 of this title (relating to Reviews and Administrative Hearings).

(r) Notification of exclusions and adjustments. HHSC [~~TDMHMR~~] will notify an HCS [~~a~~] provider of exclusions and any adjustments, including caps applied, to reported costs in accordance with §355.705 of this title (relating to Notification).

(s) Fiscal Accountability.

(1) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the non-state operated reimbursement rates.

(2) Annual reporting. Fiscal accountability will consist of the annual reporting of direct service costs including wages, and benefits, from all non-state operated HCS providers. The data will be collected on a cost report designed by HHSC [~~TDMHMR or its designee~~].

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

(B) HCS providers [~~Providers~~] are exempt from submitting cost reports in accordance with this section for the portion of their programs which convert [~~converted~~] to the Mental Retardation Local Authority (MRLA Program) [~~mental retardation local authority (MRLA) program~~] for the fiscal year in which the conversion occurred.

(3) [~~(5)~~] HHSC [~~The department~~] will require HCS providers to report all direct costs incurred on an annual fiscal year basis. HHSC [~~The department~~] will compare the reported direct service costs to the total direct service revenue.

[~~(3) In the initial rate period, providers are required to submit direct services costs on a report for a uniform three-month period of the year, as selected by the department. The report will reflect the provider's actual direct costs for the three-month period. The direct service costs will be compared to the "direct service cost" component of the modeled rates. Instances where a provider's actual direct service costs, as captured by the quarterly cost surveys, are less than 85% of the direct service revenues in the model, will require additional reporting of costs and other information from the provider.~~]

(4) [~~(6)~~] Paragraph (5) [~~(7)~~] of this subsection applies to that portion of the HCS provider's fiscal year that occurs after April 5, 1998. Paragraph (6) [~~(8)~~] of this subsection, concerning the following fiscal accountability repayment, applies to that portion of the provider's fiscal year that begins on or after January 1, 1999.

[~~(4) TDMHMR will review the results obtained from the direct services cost reports submitted for 1997 with representatives of provider associations and advocacy groups to further refine the fiscal accountability process. TDMHMR may require the provider to:~~]

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

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

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

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

(5) [~~(7)~~] Direct service revenues are calculated by multiplying the number of units eligible for payment that have been paid, for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.

(A) HCS providers [~~Providers~~] whose direct service costs are 85% or more of the direct service revenues will not be subject to repayment under this section.

(B) HCS providers [~~Providers~~] whose direct service costs are less than 80% of the direct service revenues will be required to pay to TDMHMR the difference between the direct service costs and 95% of the direct service revenues.

(C) HCS providers [~~Providers~~] whose direct service costs are between 80% and 85% of the direct service revenues will be required to pay to TDMHMR 100% of the difference between the direct service costs and 85% of the direct service revenues.

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

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

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

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

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

(7) [~~(9)~~] Where applicable, HCS providers will be notified of the requirement to repay revenues within 90 days of submitting their cost reports. An HCS [~~A~~] provider's repayment status may change as a result of the desk reviews or outside audits of cost reports, or adjustments to claims paid to the HCS provider for services provided in the cost reporting period. HCS providers [~~Providers~~] will submit the repayment amount within 60 days of notification.

(8) [~~(10)~~] Repayment will be made by the following:

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

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

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

(9) [~~(11)~~] HCS providers [~~Providers~~] required [~~by TDMHMR~~] to repay revenues to TDMHMR will be jointly and severally liable for any repayment. TDMHMR will [~~may~~] apply a vendor hold on Medicaid payments to a HCS provider [~~all providers included in a report~~] for not making the payment [~~repayment amount~~] to TDMHMR within 60 days of receiving notice.

(10) [~~(12)~~] HCS providers [~~Providers~~] who wish to appeal the requirement to make payment to TDMHMR should do so in accordance with 25 TAC §409.106.

§355.723. Reimbursement Methodology for Home and Community-Based Services (HCS)

(a) HHSC sets payment rates to be paid to HCS providers annually. Rates are prospective in nature. [The department will present reimbursement rates to the Texas MHMR Board for approval and then to the Texas Health and Human Services Commission for final adoption according to this subchapter.]

(b) Reimbursement rates apply to all non-state operated HCS providers uniformly by type of service component provided and the individual's level-of-need. Reimbursements for state-operated HCS providers are adjusted based on allowed costs reported at the end of the state fiscal year, in accordance with this subchapter. The state-operated cost adjustment will not exceed allowable federal maximums.

(c) [(d)] Modeled rates are based on relevant cost information including a sample of historical cost information and operational experience of HCS service providers in Texas. The modeled rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

[(c) The department will present reimbursement rates annually to the Texas MHMR Board for approval and then to the Texas Health and Human Services Commission for final adoption. The rates are prospective in nature.]

(d) [(e) Rates for service components may also take into account the individual's level of need as defined in 25 TAC §419.161 (relating to Level of Need Assignment).] Rates vary by level of need for residential support, supervised living, HCS foster/companion care, and day habilitation.

(e) [(f)] The modeled rates effective January 1, 1997, are based on cost components deemed appropriate for a provider. The determination of these components is based on historical cost and operational information collected from a representative sample of HCS providers. An advisory panel consisting of [service] providers, advocates, an independent firm and HHSC and TDMHMR [department] personnel, will analyze available information regarding historical cost and operational data and level-of-need assessment. The analysis will result in recommendations to the board for rates which are reasonable and adequate.

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

(g) [(h)] The rates are derived for each type of service and, when appropriate, each level-of-need and include the following cost factors: direct service staffing costs (wages for direct care, direct care supervisors, benefits, modeled staffing ratios); non-personnel operating costs; facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administrative costs; and professional consultation and program support costs.

(1) Annual rates for the time period between the years that modeled rates are rebased are set by inflating the direct cost portion of the previous year's rates by the Personal Consumption Expenditure (PCE) Chain-Type Index. [IPD-PCE as defined in this subchapter. TDMHMR will collect the direct costs on a survey during a three-month period of the current rate year. The data will reflect the provider's actual costs for the fiscal quarter ending during the three-month period. The direct service costs will be compared to the direct service cost component of the modeled rates.]

(2) The modeled rates will be analyzed to determine if rebasing is necessary for the rates effective September 1, 2001, using the following process:

(A) HHSC [TDMHMR] will seek to obtain a consultant [retain an independent firm in accordance with Texas Government Code, Chapter 2254,] to perform a detailed analysis of cost and operational information for a sample of providers throughout the state.

(B) Site visits will be made to each of the sample HCS providers to collect cost data and discuss operations.

(C) An advisory panel will be formed consisting of service providers, advocates, and HHSC and TDMHMR [department] personnel who will analyze available information regarding historical cost and operational data and level-of-need assessment. [TDMHMR will use the analysis to make recommendations to the board for rates which are deemed appropriate.]

(D) The advisory panel, HHSC, TDMHMR, and the independent firm will recommend adjustments to rate factors if required, based on the results of the analysis of the sample of cost and operational information.

[(E) Revised rates, as well as the rationale supporting the rates, will be presented to the TDMHMR Board for interim approval and for referral to THHSC for final adoption.]

(3) Refinement/adjustment of the cost factors and model assumptions will be considered, as appropriate, by HHSC. [the TDMHMR Board based on the overall industry results and recommendations of department staff. Final adoption of rates is made by the Health and Human Services Commission.]

§355.732. Cost Report.

(a) At least annually, HCS-Oproviders must submit financial and statistical information concerning the HCS-O [waiver] program services delivered to persons with mental retardation and related conditions. This information must be submitted on cost report forms provided by the Health and Human Services Commission (HHSC) [Department of Human Services] or in facsimiles which are formatted according to HHSC [Texas Department of Mental Health and Mental Retardation (TXMHMR)] specifications and are preapproved by HHSC [TXMHMR].

(b) HCS-O providers [Providers] must submit cost reports referred to in subsection (a) of this section to HHSC [TXMHMR] no later than 90 calendar days after the end of the provider's fiscal year or after receipt of the cost report forms, whichever is later, unless by HHSC [TXMHMR] grants an extension in writing.

(c) If an HCS-O [a] provider fails to file a cost report referred to in subsection (a) of this section according to all applicable rules and instructions and within the allowable time period, HHSC will notify TDMHMR to place the provider on vendor hold [TXMHMR may withhold all provider payments] until the HCS-Oprovider submits an acceptable cost report.

§355.733. Reimbursement Methodology.

(a) General. TDMHMR [The Texas Department of Mental Health and Mental Retardation (TXMHMR)] will reimburse qualified HCS-Oproviders for HCS-O [waiver] services provided to Medicaid eligible persons with mental retardation and/or related conditions (waiver services). ["Persons with related conditions" is defined according to 40 TAC §27.102.] HHSC [The Texas Department of Mental Health and Mental Retardation Board] determines, for HCS-O [Medicaid waiver] services, reimbursement rates that are uniform,

prospective, and cost related[. The board determines reimbursement rates] according to §355.701 and §355.702 of this title (relating to General Specifications, and Methodology).[TXMHMR submits rate recommendations to its board.]

(b) Frequency of rate determination by HHSC [TXMHMR] determines rates at least annually. Rates may be determined more often than annually if [the Texas Mental Health and Mental Retardation Board determines that it is] necessary.

(c) Initial rate analysis. For the initial rate period, HCS-O providers will be reimbursed on a fee for service basis using a method based upon pro forma projected expenses. Until an adequate cost report data base becomes available, the pro forma expenses are developed for each separate delivered service by specifying a list of staff, supplies, and administrative overhead expenses required to provide services in compliance with state standards, and by costing out those requirements at estimated rate year prices. Costs will be developed by using data from surveys; cost report data from other similar programs, HCS-O providers, associations, and professionals experienced in delivering services to persons with mental retardation and/or related conditions; and other sources.

(d) Reporting of cost.

(1) Cost report. Each provider must submit financial and statistical information on a cost report or in a survey format designated by HHSC [TXMHMR]. The cost report must capture the expenses of the HCS-O [waiver services] provider, including salaries and benefits, administration, building and equipment, utilities, supplies, travel, and indirect overhead expenses related to the HCS-O [waiver services] program.

(A) Accounting requirements. All information submitted on the cost reports must be based upon the accrual method of accounting unless the provider is a governmental entity operating on a cash basis. The provider must complete the cost report according to the prescribed statement in subsection (f) of this section, concerning allowable and unallowable costs. Cost reporting should be consistent with generally accepted accounting principles (GAAP). In cases where cost reporting rules conflict with GAAP, Internal Revenue Services (IRS), or other authorities, the rules specified in this section take precedence for [Medicaid provider] cost reporting purposes.

(B) Reporting period. The provider must prepare the cost report to reflect activities during the provider's fiscal year HHSC[TXMHMR] may require cost reports or other information for other periods. Failure to file an acceptable cost report or complete required additional information will result in a hold being placed on the vendor payments by TDMHMRuntil the cost report information or additional information is provided. The provider must certify the accuracy of its[his] cost report and required additional information.

(C) Allowable and unallowable costs. HCS-O providers[Providers] must complete the cost report according to allowable and unallowable costs as specified in subsection (f) of this section.

(D) Cost report certification. HCS-O providers [Providers] must certify the accuracy of cost reports submitted to by HHSC [TXMHMR] in the format specified by HHSC[TXMHMR]. HCS-O providers [Providers] may be liable for civil and/or criminal penalties if the cost report is not completed according to by HHSC[TXMHMR] requirements.

(E) Due date. HCS-O providers[Providers] must submit cost reports to by HHSC[TXMHMR] no later than three months following the end of the provider entity's fiscal year unless otherwise specified by HHSC[the department].

(F) Extension of due date by HHSC [TXMHMR] may grant extensions of due dates for good cause. A good cause is defined as a cause that the provider could not reasonably be expected to control. HCS-O providers [Providers] must submit in writing requests for extensions to HHSC [TXMHMR] before the cost report due date. HHSC[TXMHMR] staff will respond to requests within 10 working days of their receipt.

(G) Cost report supplements.HHSC[TXMHMR] may require additional financial and other statistical information to ensure the fiscal integrity of the program.

(H) Failure to file an acceptable cost report. If a provider fails to file a cost report or files an unacceptable report and refuses to make necessary changes, HHSC will notify TDMHMR to place a program provider on vendor hold[TXMHMR may withhold vendor payments to that provider] until the deficiencies are corrected.

(I) Recordkeeping requirements. Each provider must maintain records according to the requirements stated in TDMHMR rules and the HCS-O Provider Agreement [40 TAC §69.202]. The provider must ensure that the records are accurate and sufficiently detailed to support the financial and statistical information reported in the cost report. If a provider does not maintain records which support the financial and statistical information submitted on the cost report, the provider will be given 90 days to correct his recordkeeping. Vendor payments to the provider will be held by TDMHMR if the deficiency is not corrected within 90 days from the date the provider is notified.

(J) Audit and review of cost reports.

(i) Review of cost reports by HHSC[TXMHMR] reviews each cost report or survey to ensure that all submitted financial and statistical information conforms to all applicable rules and instructions. Desk reviews are performed on all cost reports according to §355.703 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports). Cost reports not completed according to instructions or rules are returned to the provider for proper completion.

(ii) On-site audit of cost reports by HHSC [TXMHMR] staff perform a sufficient number of audits each year to ensure the fiscal integrity of the HCS-O [waiver] services reimbursement rates. The number of on-site audits actually performed each year may vary. Adjustments consistent with the results of on-site audits are made to the rate base until closure before the final rate analysis. During either desk audits or on-site audits according to §355.705 of this title (relating to Notification), HHSC [TXMHMR] notifies HCS-O providers of the exclusions and adjustments made to reported expenses.

(iii) Access to records. The provider must allow by HHSC[TXMHMR or its designated agents] access to all records necessary to verify information on the cost report. This requirement includes records pertaining to related party transactions and other business activities engaged in by the provider. If a provider does not allow inspection of pertinent records within 30 days following written notice from HHSC [TXMHMR], HHSC will notify TDMHMR to place a program provider on vendor hold[a hold will be placed on the vendor payments] until access to the records is allowed.

(iv) Reviews of cost report disallowances. Under §355.707 of this title (relating to Reviews and Administrative Hearings), HCS-O providers may request an informal review and, if necessary, an administrative hearing to dispute any action taken by the department.

(2) Other sources of cost information. In the absence of reliable cost report data from which to set rates, rates will be developed by using data from surveys; cost report data from other similar

programs; consultation with other service providers, associations, and professionals experienced in delivering services to persons with mental retardation and/or related conditions; and other sources.

(e) Rate setting methodology.

(1) Rates by unit of service. Reimbursement rates for HCS-O[~~home and community-based OBRA waiver~~] services will be determined on a fee for service basis.[~~for each of the services provided under the Social Security Act, §1915(c), Medicaid waiver for persons with mental retardation and/or related conditions, who require alternate placement in accordance with OBRA-87.~~]

(2) Exclusion or adjustment of expenses. HCS-O providers[~~Providers~~] must eliminate unallowable expenses from the cost report by HHSC[~~TXMHMR~~] excludes from the rate base any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses reported by HCS-O providers. The purpose is to ensure that the rate base reflects costs which are consistent with efficiency, economy, and quality of care; are necessary for the provision of HCS-O[~~waiver~~] services; and are consistent with federal and state Medicaid regulations. If there is doubt as to the accuracy or allowableness of a significant part of the information reported, individual cost reports may be eliminated from the rate base.

(3) Rate determination process. HHSC [~~The Texas Mental Health and Mental Retardation Board~~] determines, for each service, fee for service reimbursement rates which will reasonably reimburse the costs of an economic and efficient provider. [~~TXMHMR staff submit recommendations for reimbursement rates.~~] Recommended rates are determined in the following manner.

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(B) Each provider's total allowable costs are projected from the historical cost reporting period to the prospective rate period, as described in §355.704 of this title (relating to Determination of Inflation Indices).

(C) An allowable cost per unit of service is calculated for each service. The allowable costs per unit of service are arrayed and weighted by the number of units of service and the median point is calculated.

(D) The median cost component is multiplied by an appropriate percentage incentive factor, determined by HHSC[~~the TXMHMR board~~], to calculate the recommended reimbursement rates which, in the board's opinion, will be:

(i) within budgetary constraints;

(ii) adequate to reimburse the cost of operations for an efficient and economic provider; and

(iii) justifiable given current economic conditions.

(E) HHSC[~~The department~~] also adjusts rates according to §355.706 of this title (relating to Adjusting Reimbursement). [~~Rates When New Legislation, Regulations, or Economic Factors Affect Costs) if new legislation, regulations, or economic factors affect costs.~~]

(f) Allowable and unallowable costs.

(1) General. Allowable and unallowable costs are defined to identify expenses which are and are not reasonable and necessary to provide HCS-O [~~waiver~~] services [~~to clients~~] by an economic and efficient provider. Only allowable cost information is used to compile the rate base. In cases where by HHSC[~~TXMHMR~~] cost reporting rules conflict with GAAP, IRS, or other authorities, by HHSC[~~TXMHMR~~] rules take precedence for cost reporting purposes.

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

(A) Allowable costs--Those expenses that are reasonable and necessary in the normal conduct of operations relating to the provision of HCS-O[~~waiver~~] services.

(i) "Reasonable" refers to the amount expended. The test of reasonableness is that the amount expended does not exceed the cost which would be incurred by a prudent business operator seeking to contain costs.

(ii) "Necessary" refers to the relationship of the cost to provision of HCS-O[~~waiver~~] services. To qualify as a necessary expense, a cost must be one that is usual and customary in the operation of HCS-O[~~waiver~~] services and must meet the following requirements:

(I) the expenditure was not for personal or other activity not specifically related to the provision of HCS-O[~~waiver~~] services;

(II) the cost does not appear on the list of specific unallowable costs and is not unallowable under other federal, state, or local laws or regulations;

(III) the cost bears a significant relationship to the provision of HCS-O[~~waiver~~] services. The test of significance is whether elimination of the expenditure would adversely affect the delivery of HCS-O [~~waiver~~] services;

(IV) the expense was incurred in the purchase of materials, supplies, or services provided directly to the clients or staff of the program in the conduct of normal business operations; and

(iii) normal conduct of operations relating to HCS-O[~~waiver~~] services includes, but is not limited to, the following.

(I) Expenses not used solely for the provision of HCS-O[~~waiver~~] services. Whenever allowable costs are attributable partially to personal or other business interests not related to the provision of HCS-O[~~waiver~~] services and partially to HCS-O[~~waiver~~] services, the latter portion may be allowed on a prorated basis if the proportion of use by the HCS-O[~~waiver~~] services is well documented.

(II) Related party transaction. Allowable costs must result from arms length transactions involving unrelated parties. In related party transactions, the allowable cost to the HCS-O[~~waiver~~] services program is the cost to the related party. Allowable costs in this regard are limited to the lesser of the actual purchase price to the related party, or usual and customary charges for comparable goods or services. A related party is a person or organization related to the provider entity by blood and/or marriage, or common ownership, or any association which permits either entity to exert power or influence, either directly or indirectly, over the other.

(B) Unallowable costs--Those expenses that are not reasonable or necessary for the provision of HCS-O[~~waiver~~] services. Unallowable costs are not included in the rate base used to determine recommended rates.

(3) List of allowable costs. The following list of allowable costs is not comprehensive, but rather serves as a general guide and identifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost.

(A) Compensation of HCS-O[~~waiver~~] services staff. Compensation will be given only to those staff who provide

HCS-O[~~waiver~~] services directly to the clients or in support of staff of the HCS-O[~~waiver~~] services in the normal conduct of operations relating to the provision of HCS-O[~~waiver~~] services. Compensation includes:

(i) wages and salaries;

(ii) payroll taxes and insurance. Federal Insurance Contributions Act (FICA or Social Security), unemployment compensation insurance, workman's compensation insurance; and

(iii) employee benefits. Employer-paid health, life, accident, liability, and disability insurance for employees; contributions to employee retirement fund; and deferred compensation limited to the dollar amount the employer contributes. The expense:

(I) must represent a clearly enumerated liability of the employer to individual employees;

(II) must not be incurred as a benefit to employees who do not provide services directly to the clients or staff of the HCS-O[~~waiver~~] services program; and

(III) must not represent any form of profit-sharing.

(B) Compensation of staff outside of the HCS-O[~~waiver~~] program who provide services directly to the clients or in support of staff of the program. Allowable compensation is limited to the prorated portion of the actual working time spent on behalf of the program.

(C) Compensation of outside consultants providing services directly to the clients or in support of staff of the program.

(D) Materials and supplies. This category includes office supplies, housekeeping supplies, medical, and other supplies.

(E) Utilities. This category includes electricity, natural gas, fuel oil, water, waste water, garbage collection, telephone, and telegraph.

(F) Buildings, equipment, and capital expenses. This category includes buildings, equipment, and capital used by the HCS-O[~~waiver~~] provider or in support of the HCS-O[~~waiver~~] services staff, and not for personal business. If these costs are shared with other program operations, the portion of the costs relating directly to HCS-O[~~waiver~~] services may be allowed on a prorated basis if the proportion of use for HCS-O[~~waiver~~] services is documented.

(G) Depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased, or rented property used by the HCS-O[~~waiver~~] provider that are valued at more than $500 at the time of purchase must be depreciated or amortized using the straight line method. The minimum usable lives to be assigned to common classes of depreciable property are as follows:

(i) buildings: 30 years, with a minimum salvage value of 10%; and

(ii) transportation equipment used for the transport of clients, materials and supplies, or staff providing HCS-O[~~waiver~~] services: a minimum of three years for passenger automobiles and five years for light trucks and vans, all with a minimum salvage value of 10%.

(H) Provider-owned property. Property owned by the provider entity and improvements to property owned, leased, or rented by the provider that are valued at less than $500 at the time of purchase may be treated as ordinary expenses.

(I) Rental and lease expense. This category includes rental and lease expenses for buildings, building equipment, transportation equipment, and other equipment, and related materials, and supplies used by the HCS-O[~~waiver~~] provider. Rental or lease expense paid to a related party is limited to the actual allowable cost incurred by the related party.

(J) Transportation expense. This category includes the cost of public transportation or mileage claimed at the allowable reimbursement per mile set by the Texas[~~state~~] legislature for state employees.

(K) Interest expense. Interest expense is allowable on loans for the acquisition of allowable items, subject to:

(i) all of the requirements for allowable costs;

(ii) written evidence of the loan; and

(iii) the provider entity being named as maker or co-maker of the note. Allowable interest is limited to the lesser of the cost to the related party or the prevailing national average prime interest rate for the year in which the loan contract was executed.

(L) Tax expense. This includes real and personal property taxes, motor vehicle registration fees, sales taxes, Texas corporate franchise taxes, and organization filing fees.

(M) Insurance expense. This category includes facility fire and casualty, professional liability and malpractice, and transportation insurance.

(N) Contract HCS-O[~~waiver~~] services provided by outside vendors to persons with mental retardation and/or related conditions.

(O) Business and professional association dues limited to associations devoted primarily to the issues of mental retardation and/or related conditions.

(P) Outside training costs. Limited to direct costs (transportation, meals, lodging, and registration fees) for training provided to personnel rendering services directly to the clients or staff of the HCS-O[~~waiver~~] provider. The training must be directly related to issues concerning mental retardation and/or related conditions and located within the continental United States.

(4) List of unallowable costs. Unallowable costs are those expenses that are not reasonable or necessary for the provision of HCS-O[~~waiver~~] services. Unallowable costs are not included in the rate base used to determine recommended rates. The following list is not intended to be comprehensive, but rather to serve as a general guide and identify certain key expense areas that are not allowable. The absence of a particular cost does not necessarily mean that it is an allowable cost:

(A) compensation in the form of salaries, benefits, or any form of compensation given to individuals who do not provide HCS-O[~~waiver~~] services either directly to clients or in support of staff;

(B) personal expenses not directly related to the provision of HCS-O[~~waiver~~] services;

(C) client room and board expenses, except for those related to respite care;

(D) management fees paid to a related party and that are not derived from the actual cost of materials, supplies, or services provided directly to the program;

(E) advertising expenses other than those for yellow pages advertising, advertising for employee recruitment, and advertising to meet any statutory or regulatory requirement;

(F) business expenses not directly related to the provision of HCS-O[~~waiver~~] services;

(G) political contributions;

(H) depreciation and amortization of unallowable costs. This category includes amounts in excess of those resulting from the straight line depreciation method, capitalized lease expenses in excess of the actual lease payment, and goodwill or any excess above the actual value of the physical assets at the time of purchase;

(I) trade discounts of all types;

(J) donated facilities, materials, supplies, and services including the values assigned to the services of unpaid workers and volunteers;

(K) dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with the provision of HCS-O[~~waiver~~] services;

(L) entertainment expenses except those incurred for entertainment provided to the staff of the HCS-O[~~waiver~~] provider as an employee benefit;

(M) boards of directors' fees;

(N) fines and penalties for violations of regulations, statutes, and ordinances of all types;

(O) fund-raising and promotional expenses;

(P) expenses incurred in the purchase of goods and services with revenues from gifts, donations, endowments, and trusts;

(Q) interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income;

(R) insurance premiums pertaining to items of unallowable cost;

(S) accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount. This category includes any form of profit-sharing and the accrued liabilities of deferred compensation plans;

(T) planning and evaluation expenses for the purchase of depreciable assets, except where purchases are actually made and the assets are put into service in providing HCS-O[~~waiver~~] services;

(U) mileage expense which exceeds the current reimbursement rate set by the Texas Legislature for state employee travel or expenses exceeding actual cost of public transportation;

(V) returns, allowances, and refunds;

(W) costs of purchases from a related party which exceed the original cost to the related party;

(X) out of state travel expenses, except for provision of HCS-O[~~waiver~~] services that may include training and quality assurance functions;

(Y) legal and other costs associated with litigation between a provider and state or federal agencies, unless the litigation is decided in the provider's favor;

(Z) contributions to self insurance funds which do not represent payments based on current liabilities;

(AA) any expense incurred because of imprudent business practices;

(BB) expenses which cannot be adequately documented;

(CC) expenses not reported according to the instructions on the cost report;

(DD) expenses not allowable under other pertinent federal, state, or local laws and regulations; and

(EE) federal, state, and local income taxes and any expenses related to preparing and filing income tax forms.

§355.741. Definitions.

The following words and terms, when used in §§355.741-743[~~this subchapter~~], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Allowable costs--Those expenses that are reasonable and necessary costs in the normal conduct of operations relating to case management services. See also definitions of "reasonable cost" and of "necessary cost" in this section, and §355.743(e)(2) of this title (relating to Reimbursement Methodology for Service).[~~Case Management for Individuals with Mental Retardation or Related Condition).~~]

(2) Case management contact--An action taken on behalf of a client to locate, coordinate and monitor necessary and appropriate services with a specific person or organization. This activity is referred to as service coordination in the Texas Department of Mental Health and Mental Retardation (TDMHMR) Services Coordination program rule.

(3) [~~(4)~~] Developmental period--The period of time from conception to 18 years of age.

[~~(3) Department The Texas Department of Mental Health and Mental Retardation (TDMHMR) or its designee.~~]

(4) [~~(5)~~] Functional retardation-Arrest or deterioration of intellectual ability that occurs after the developmental period. It is not the same as mental retardation.

(5) [~~(6)~~] Mental retardation-Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(6) [~~(7)~~] Necessary cost--A cost that is usual and customary in the operation of case management services and that meets the following requirements.

(A) The cost is not for personal or other activity not specifically related to the provision of case management services.

(B) The cost does not appear on the list of specific unallowable costs and is not unallowable under other federal, state, or local laws or regulations. See definition of "unallowable cost" in this section, and see §355.743(e)(3) of this title (relating to Reimbursement Methodology for Service).[~~Case Management for Individuals with Mental Retardation or Related Condition).~~]

(C) The cost bears a significant relationship to case management services. The test of significance is whether there would be an adverse impact on the delivery of case management services if the expenditure were eliminated.

(7) [~~(8)~~] Prospective reimbursement-Reimbursement payment amounts that are determined for a future period of time and that are not to be readjusted during that period.

(8) [~~(9)~~] Reasonable cost--The amount that does not exceed the cost which would be incurred by a prudent business operator seeking to contain costs.

(9) [~~(10)~~] Related condition--A severe, chronic disability that meets all the criteria outlined in 42 Code of Federal Regulations 435.1009.

(10) [~~(11)~~] Subaverage general intellectual functioning--Measured intelligence on standardized psychometric instruments of two or more standard deviations below the age group mean for the tests used.

~~[(12) Texas Department of Mental Health and Mental Retardation--The Texas Department of Mental Health and Mental Retardation or its designee.]~~

(11) [~~(13)~~] Unallowable cost--A cost that is not a reasonable or necessary cost for the provision of case management services. See definitions of "necessary cost" and of "reasonable cost" in this section.

§355.742. Service Limitations.

(a) Case management services will not be reimbursable as a Medicaid service for which another payor is liable. Case management activities associated with the following are not reimbursable as an optional targeted case management service:

(1) Medicaid eligibility determinations and redeterminations;

(2) Medicaid eligibility intake processing;

(3) Medicaid preadmission screening;

(4) prior authorization for Medicaid services;

(5) required Medicaid utilization review;

(6) Texas Health Steps [~~EPSDT~~] administration; and

(7) Medicaid "lock-in" provided for under §1915(a) of the Omnibus Reconciliation Act of 1987.

(b) Specifically, reimbursement will not be made for the following:

(1) outreach activities that are designed to locate individuals who are potentially Medicaid eligible. This exclusion does not include Medicaid eligible persons requiring services outlined in TDMHMR rules [~~25 TAC §409.203(b)(1) (Case Management Services)~~];

(2) any medical evaluation, examination or treatment billable as a distinct Medicaid covered benefit. However, referral arrangements and staff consultation for such services are reimbursable as a case management service;

(3) services provided under the home and community-based services waiver for persons with mental retardation (HCS);

(4) services provided under the home and community-based services waiver for persons with mental retardation or related conditions (HCS-OBRA); or

(5) case management services covered by another Medicaid-reimbursed program or any other non-Medicaid funding source.

§355.743. Reimbursement Methodology for Service

(a) The [~~General information. As specified in §§335.701-355.707 of this title (relating to Definitions and General Specifications; Method for Cost Determination; Basic Objectives and Criteria for Review of Cost Reports; Determination of Inflation Indices; Notification; Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs; and Reviews and Administrative Hearings), the~~] Texas Department of Mental Health and Mental Retardation (TDMHMR) reimburses qualified local authorities for service coordination provided to Medicaid-eligible individuals who are eligible for service coordination according to §412.455 of this title (relating to Reimbursement Methodology for Service). [~~25 TAC §412.455 (Eligibility).~~] HHSC [~~The Texas Health and Human Services Commission (THHSC)~~] determines reimbursement [~~with the advice and recommendation of the TDMHMR Board at least annually~~] for service coordination. Reimbursement is:

(1) uniform statewide;

(2) prospective [~~(as defined in §355.741 of this title (relating to Definitions))~~]; and

(3) cost related with a year-end settlement.

(b) Separate rates. Separate rates are set for services provided to:

(1) individuals in the mental retardation priority population as defined in 25 TAC §412.453 (to Definitions) and persons with a related condition (as defined in 42 CFR §435.1009);

(2) individuals in the adult mental health priority population as defined in 25 TAC §412.453 (Definitions); and

(3) individuals in the child mental health priority population as defined in 25 TAC §412.453 (Definitions).

(c) Local authority qualifications. Section 1396n(g) of 42 USC is invoked to limit the provision of service coordination to the state mental retardation authorities, the state mental health authorities, TDMHMR, or its designated local authorities authorized under §534.054 of the Texas Health and Safety Code, who offer a service delivery system of required services as outlined in §534.053 of the Texas Health and Safety Code.

(d) Rules and procedures. TDMHMR has implemented rules and procedures to ensure that service coordination is provided by persons who meet the requirements specified by TDMHMR and is provided in compliance with federal and state laws, rules, and regulations.

(e) Reimbursement methodology . HHSC [~~THHSC~~] determines reimbursement according to §355.701 of this title (relating to General Specifications) [~~with the advice and recommendation of the TDMHMR Board~~]. As specified in §355.706 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs), HHSC [~~THHSC~~] may also adjust reimbursements [~~when new legislation, regulations, or economic factors affect costs as recommended by the TDMHMR Board. The TDMHMR Board approves reimbursement recommendations for submission to THHSC~~].

(1) For the reimbursement period beginning April 1, 1999, local authorities will be reimbursed a statewide rate comprising a modeled rate plus a statewide weighted average associated service add-on.

(A) The modeled rate is based on cost calculations that include a statewide weighted average hourly wage for persons who provide service coordination as 100 percent of their job responsibilities, a predetermined caseload size, a statewide weighted average supervisory wage rate and span of control, and a statewide weighted average benefits factor.

(B) The associated service add-on includes clerical and support costs, travel and training costs, and other allowable operating costs (e.g., rent, utilities, office supplies, administration, and depreciation) necessary to provide service coordination.

(2) At the end of each reimbursement period HHSC [~~TDMHMR~~] will compare the difference between the statewide rate and each local authority's service coordination costs as submitted on its cost report in accordance with subsection (g) of this section.

(A) If a local authority's costs are less than 95 percent of the statewide rate, the local authority will pay TDMHMR the difference between that local authority's costs and 95 percent of the statewide rate. The local authority will be notified of the amount due to TDMHMR by certified mail.

(i) The local authority will have 30 days to make payment. If payment is not received from the local authority within 30 days of the date that the notice was received, as specified on the certified mail receipt, HHSC will notify TDMHMR to place[~~payment to~~] the local authority [~~will be placed~~] on vendor hold.

(ii) A local authority that has been placed on vendor hold may request an administrative hearing in accordance with §355.707 of this title (relating to Reviews and Administrative Hearings). [~~25 TAC Chapter 409, Subchapter B, concerning Adverse Actions.~~]

(B) If a local authority's costs exceed the statewide rate, TDMHMR will reimburse the local authority its costs up to 125 percent of the statewide rate. TDMHMR will notify the local authority by certified mail of the amount that is owed to the local authority and will make payment within 30 days of the date that the notice was received, as specified on the certified mail receipt.

(3) At such time as HHSC [~~TDMHMR~~] determines that cost data collected as described in subsection (g) of this section are reliable, statewide reimbursement rates will be developed based on the cost data submitted by local authorities in the following manner:

(A) Total allowable costs for each provider for each rate will be determined from analyzing the allowable historical costs reported on the cost report.

(B) Each provider's total allowable costs are projected from the historical cost reporting period to the prospective reimbursement period using inflation factors according to §355.704 of this title (relating to Determination of Inflation Indices) for each covered contact.

(C) Each provider's projected cost per unit of service is calculated. The mean provider cost per contact is calculated, and the statistical outliers (those providers whose cost per contact exceeds plus or minus (+/-) two standard deviations of the mean provider cost per contact) are removed. After removal of the statistical outliers, the mean cost per contact is calculated. This mean cost per contact becomes the recommended cost per contact. Following each annual reimbursement period, allowable costs will be compared to reimbursement and any resulting monetary reconciliation will be made in accordance with paragraph (2) of this subsection.

(f) Reimbursable unit of service.

(1) The unit of service upon which reimbursement is made is a face-to-face contact with a Medicaid-eligible individual eligible for service coordination in accordance with 25 TAC §412.455 (Eligibility) by:

(A) a local authority as required by subsection (c) of this section; and

(B) a person who meets the qualifications set forth in 25 TAC §412.461 (Minimum Qualifications).

(2) The face-to-face contact must include the provision of one or more services as defined in 25 TAC §412.453(18) (Definitions).

(3) Reimbursement is limited to one unit of service per Medicaid-eligible individual per month.

(g) Reporting of costs. HHSC [~~TDMHMR~~] or its designee collects from local authorities statistical and cost data. The statistical data includes, but is not limited to, the total number of individuals receiving service coordination, and the number of Medicaid-eligible individuals receiving service coordination. The cost data include direct costs, programmatic indirect costs, and general and administrative costs including salaries, benefits, and non-labor costs.

(1) Cost reports. Each local authority must submit financial and statistical information in a cost report or survey format designated by HHSC[~~TDMHMR~~] or its designee. The cost report will capture the expenses of the local authority including salaries and benefits, administration, building and equipment, utilities, supplies, travel, and indirect overhead costs related to the provision of service coordination. Only allowable cost information is used to compile the cost base, as defined in §355.741 of this title and §355.708 of this title (relating to Allowable and Unallowable Costs).

(A) Accounting requirements. All information submitted on the cost reports must be based upon the accrual method of accounting unless the governmental entity operates on a cash or modified accrual basis. The local authority must complete the cost report according to the prescribed statement of allowable and unallowable costs as referenced in §355.702 of this title (relating to Method of Cost Determination). Cost reporting should be consistent with generally accepted accounting principles (GAAP). In cases in which cost reporting rules conflict with GAAP, Internal Revenue Service, or other authorities, the cost reporting rules take precedence.

(B) Reporting period. The local authority must prepare the cost report according to §355.702 of this title (relating to Method of Cost Determination).

(2) Exclusions or adjustments. Local authorities must exclude unallowable costs from the cost report. HHSC [~~TDMHMR~~] or its designee excludes from the cost reimbursement base any unallowable costs included in the cost report and makes adjustments to expenses reported by local authorities to ensure that the cost reimbursement base reflects costs which are consistent with efficiency, economy, and quality care, are necessary for the provision of service coordination services, and are consistent with federal and state Medicaid regulations as specified in §355.701 of this title (relating to Definitions and General Specifications). If there is doubt as to the accuracy of allowability of a significant part of the information reported, individual cost reports may be eliminated from the cost base.

(3) Desk reviews. As specified in §355.703 of this title (relating to Basic Objectives and Criteria for Review of Cost Reports), HHSC [~~TDMHMR~~] or its designee reviews such cost reports or surveys. Cost reports not completed according to instructions or rules will be corrected and resubmitted by the local authority within the time frame prescribed by HHSC [~~TDMHMR~~].

(4) On-site audit of cost reports. HHSC [~~TDMHMR~~] or its designee performs a sufficient number of audits each year to ensure the fiscal integrity of the service coordination reimbursement. The number of on-site audits actually performed each year may vary.

(A) HHSC [~~TDMHMR~~] or its designee notifies local authorities of disallowances and adjustments to reported expenses made during desk reviews and on-site audits of cost reports according to §355.705 of this title (relating to Notification).

(B) Reviews of cost report disallowances. A local authority which disagrees with HHSC [~~TDMHMR~~] or its designee on cost report disallowances may request a review of the disallowances as

specified in §355.707 of this title (relating to Reviews and Administrative Hearings).

(5) Recordkeeping requirements. Each local authority must maintain records according to the requirements specified in TDMHMR rules and the provider agreement. [~~40 TAC §69.205 (Contractor's Records).~~] The local authority must ensure that the records are accurate and sufficiently detailed to support the financial and statistical information reported in the cost report. If a local authority does not maintain records which support the financial and statistical information submitted on the cost report, the local authority will be given 90 days to correct this recordkeeping. HHSC will notify TDMHMR to place the authority on vendor hold [~~TDMHMR will place a vendor hold on Medicaid payments to the local authority~~] if the correction is not made within 90 days from the date the local authority receives notification.

(6) Access to records. The local authority must allow HHSC [~~TDMHMR or its designated agents~~] access to any and all records necessary to verify information on the cost report.

(h) Billing and payment reviews. The provider must allow TDMHMR access to any and all records regarding service coordination.

(1) TDMHMR will conduct periodic billing and payment reviews utilizing TDMHMR's Billing and Payment Review Protocol.

(2) Recoupment will be taken according to the application of error calculations contained in TDMHMR's Billing and Payment Review Protocol.

§355.761. Reimbursement Methodology for Institutions for Mental Diseases (IMD)

(a) The Health and Human Services Commission (HHSC)[~~department~~] determines IMD reimbursement annually. A statewide prospective reimbursement will be available to all eligible IMD providers for reimbursable IMD services [~~provided on or after November 16, 1994~~]. This reimbursement is inclusive of all costs allowable under Medicare payment principles.

(b) Initial reimbursement period. The initial reimbursement period is defined as November 16, 1994-April 30, 1996. The reimbursement for this period is determined from Medicare cost reports for state-operated hospitals which provided IMD services between September 1, 1993, and August 31, 1994. The Medicare cost reports are reviewed by HHSC [~~the department~~] to assure that the costs used for calculating each hospital's average per diem cost for IMD services are allowable under Medicare payment principles and are only those costs incurred by the hospital for care and treatment provided to persons 65 years and older and occupying a Medicare-certified bed. Using these Medicare cost reports, each hospital's average per diem cost for IMD services is calculated. HHSC [~~The department~~] adjusts each hospital's average per diem cost for IMD services to the initial reimbursement period by applying a cost-of-living index. The cost-of-living index used is the Health Care Financing Administration's (HCFA) Market Basket Forecast Excluded Hospital Input Price Index (as reported in the Dallas Regional Medical Services Letter Number 95-015). Due to the length of the initial reimbursement period, the percentages by which the average per diem costs are adjusted are prorated by taking 1/12 of the forecast for calendar year 1994 plus 12/12 of the forecast for calendar year 1995 plus 4/12 of the forecast for calendar year 1996. After adjusting the average per diem cost for each hospital, the average per diem costs for all of the hospitals are arrayed from high to low. The median (50th percentile) average per diem cost is selected as the prospective reimbursement for the initial reimbursement period. If the 50th percentile falls between IMD providers, then the immediately higher average per diem cost will be selected as the reimbursement.

(c) The[~~Future reimbursement periods. Beginning in 1996, the~~] reimbursement period begins on May 1 and ends on April 30 of the following year.

(1) Annually, each IMD provider is required to submit to HHSC[~~TDMHMR, Office of Medicaid Administration,~~] a copy of its Medicare cost report for its most recent fiscal year ending prior to September 1. Cost reports must be received by HHSC[~~the department~~] no later than 90 days following the end of the IMD provider's fiscal year. Each IMD provider is required to identify in its cost report as a subunit (IMD unit) those Medicare-certified units on which reimbursable IMD services were provided. The Medicare cost reports are reviewed by HHSC [~~the department~~] to assure that the costs to be used for calculating each IMD provider's average per diem cost for IMD services are allowable under Medicare payment principles and are only those costs incurred for care and treatment provided to persons 65 years of age and older and occupying a Medicare-certified bed.

(2) Upon completion of the reviews of cost reports, and prior to calculating average per diem costs for each IMD provider, cost reports and prior payment histories are reviewed. To ensure the integrity of the data and avoid bias in the resulting reimbursement due to low volume and other inefficiencies, cost reports of IMD providers will be eliminated from the database for any one of the following reasons:

(A) being in operation fewer than 90 calendar days during the previous cost reporting period;

(B) having an occupancy rate on its IMD units of less than 90% for 50% or more of the days covered during the previous cost reporting period; or

(C) individually accounting for fewer than 5.0% of the total days of care reimbursed by Medicaid as IMD services during the previous cost reporting period.

(3) Using the Medicare cost reports in the database, HHSC[~~the department~~] calculates for each IMD provider an average per diem cost for IMD services. Each IMD provider's average per diem cost is adjusted to the future reimbursement period by applying a cost-of-living index. The cost-of-living index used is the Health Care Financing Administration's (HCFA) Market Basket Forecast Excluded Hospital Input Price Index (as reported to the States in the Dallas Regional Medical Services Letter for the federal fiscal quarter ending in December of the year preceding the next[~~future~~] reimbursement period). The percentage used for adjustments to each IMD provider's average per diem cost is prorated, using 2/3 of the forecast for the calendar year in which the reimbursement period begins (May through December) plus 1/3 of the forecast for the next calendar year (January through April).

(4) After adjusting the average per diem cost for each IMD provider, the average per diem costs of all IMD providers remaining in the database are arrayed from high to low. The median (50th percentile) average per diem cost is selected as the prospective reimbursement for the future reimbursement period. If the 50th percentile falls between IMD providers, then the immediately higher average per diem cost will be selected as the reimbursement. All IMD providers will be paid this reimbursement for each day during the next reimbursement period that IMD services are provided to an eligible individual.

(d) Financial Audits. Financial audits are performed periodically on all IMD providers. IMD providers have the right to appeal exclusions and adjustments to cost reports according to TDMHMR's[~~the department's~~] informal reviews and administrative hearings process contained in §355.707 of this title (relating to Reviews and Administrative Hearings).

§355.773. Reporting Costs by MRLA Providers.

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

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

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

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

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

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

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

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

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

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

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

(l) Access to records. Each provider must allow access by HHSC [TDMHMR or its designee] to any and all records necessary to verify cost data submitted to HHSC [TDMHMR or its designee]. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider that are directly or indirectly related to the provision of contracted services. Failure to allow inspection of pertinent records within 10 working days following written notice from HHSC [TDMHMR] constitutes a violation of the MRLA provider contract. If the administrative office or other entity pertaining to a multi-contract operation refuses access to records, then the penalties are extended to all of the provider's entities having Medicaid contracts with TDMHMR. Additional rules regarding access to records that are out-of-state may be found in §355.703 of this title (relating to Basic Objectives and Criteria for Review of Cost Reports). [§355.702 of this title (relating to Methods for Cost Determination).]

(m) Reviews of exclusions or adjustments. A provider who disagrees with HHSC's [TDMHMR's] exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.707 of this title (relating to Reviews and Administrative Hearings).

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

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

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

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

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

(A) report more detailed financial information;

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

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

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

§355.775. Reimbursement Methodology for the MRLA program.

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

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

(c) [TDMHMR will present reimbursement rates at least annually to the Texas MHMR Board for approval and then to the THHSC for final adoption.] The rates are prospective in nature.

(d) Modeled rates are based on relevant cost information including a sample of historical cost information and operational experience of service providers in Texas. The rates will be the same as the HCS rates which are set in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-based Services (HCS)), with the exception of the case management service component, as explained in subsection (g) of this section.

(e) [Rates for service components may also take into account the individual's level of need as defined in 25 TAC §409.507 (relating to Payment Category Assignment and Provider Claims Payment).] Rates for residential support, supervised living, MRLA foster/companion care, and day habilitation vary by level of need and are paid on a daily basis.

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

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

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

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

§355.781. Rehabilitative Services Reimbursement Methodology.

(a) General information.

(1) The Texas health and Human Services Commission [department] will reimburse qualified rehabilitative services providers for rehabilitative services provided to Medicaid-eligible persons with mental illness.

(2) HHSC [The Texas Mental Health and Mental Retardation Board] determines reimbursement according to §§355.701 - 355.709 of this subchapter, relating to [Chapter 409, Subchapter A of this title, governing] General Reimbursement Methodology for all Texas Department of Mental Health Mental Retardation Medical Assistance Programs. The reimbursement is uniform and determined prospectively and at least annually. Reimbursement may be determined more often if HHSC [the Texas Mental Health and Mental Retardation Board] determines it to be necessary.

(b) Reimbursement during initial reimbursement period.

(1) For the initial reimbursement period beginning January 1, 1997 and until such time as HHSC [the department] determines that cost data collected as described in subsection (d) of this section are reliable, rehabilitative services providers will be reimbursed utilizing estimated costs to determine pro forma rates. The pro forma rates will be developed based on the most recent salary data obtained from the Texas Medical Association and the National Survey of Hospital and Medical School Salaries. Salaries will be based on median salary rates and adjusted as appropriate for Texas-specific salaries. The Personal Consumption Expenditures (PCE) Chain-Type Index [Implicit Price Deflator for Personal Consumption Expenditures (IPD-PCE)] will be used to inflate the 1994 salaries to the rate period. Rates are cost based using staffing requirements as specified in §419.455 of this title (relating to Rehabilitative Services: General Requirements); [§409.356 of this title (relating to Reimbursable Rehabilitative Service Definitions: Community Support Services);]§419.456 of this title (relating to Community Support Services); [§409.357 of this title (relating to Reimbursable Rehabilitative Service Definitions: Day Programs for Acute Needs);] §419.457 of this title (relating to Day Programs Acute Needs); [§409.358 of this title (relating to Reimbursable Rehabilitative Service Definitions: Day Program Services for Skills Training);] §419.458 of this title (relating to Day Programs for Skills Training); [and §409.359 of this title (relating to Reimbursable Rehabilitative Service Definitions: Day Program Services for Skills Maintenance; Plan of Care Oversight--Adults and Children).] §419.459 of this title (relating to Day Programs for Skills Maintenance); and §419.460 of this title relating to Rehabilitative Treatment Plan Oversight).;

(2) HHSC [The department] will collect cost data as described in subsection (d) of this section.

(3) HHSC [The department] will calculate rates using the process described in subsection (e) of this section when reliable rehabilitative services provider cost data becomes available.

(c) Reimbursement during subsequent periods. At such time that reliable cost data become available the reimbursement will be developed using HHSC's [via the department's] cost report process as described in subsections (d) and (e) of this section.

(d) Reporting of Costs.

(1) Cost reporting. Rehabilitative services providers [Providers] must submit information quarterly, unless otherwise specified, on a cost report formatted according to HHSC's [the department's] specifications. From the data, HHSC [the department] will develop and implement cost-based, statewide, uniform reimbursements for rehabilitative services. Rehabilitative services providers [Providers] must complete the cost report according to the rules and specifications set forth in this section.

(2) Reporting period and due date. Rehabilitative services providers [Provider agencies] must prepare the cost report to reflect rehabilitative services provided during the designated cost report reporting period. The cost reports must be submitted to HHSC [the department] no later than 45 days following the end of the designated reporting period unless otherwise specified by HHSC [the department].

(3) Extension of the due date. HHSC [The department] may grant extensions of due dates for good cause. A good cause is one that the rehabilitative services provider [agency] could not reasonably be expected to control. Rehabilitative services providers [Provider agencies] must submit requests for extensions in writing to HHSC [the department] before the cost report due date. HHSC [The department] will respond to requests within 10 workdays of receipt.

(4) Failure to file an acceptable cost report. If a rehabilitative services provider [agency] fails to file a cost report according to all applicable rules and instructions, HHSC will notify TDMHMR to place the rehabilitative services provider on hold until the rehabilitative services provider [the department may withhold all provider payments until the provider agency] submits an acceptable cost report.

(5) Allocation method. If allocations of cost are necessary, rehabilitative services provider [~~agencies~~] must use and be able to document reasonable methods of allocation. HHSC [~~The department~~] adjusts allocated costs if HHSC [~~the department~~] considers the allocation method to be unreasonable. The rehabilitative services provider [~~agency~~] must retain work papers supporting allocations for a period of three years or until all audit exceptions are resolved (whichever is longer).

(6) Cost report certification. Rehabilitative services providers [~~Provider agencies~~] must certify the accuracy of cost reports submitted to HHSC [~~the department~~] in the format specified by HHSC. Rehabilitative services providers [~~the department. Provider agencies~~] may be liable for civil and/or criminal penalties if they misrepresent or falsify information.

(7) Cost data supplements. HHSC [~~The department~~] may require additional financial and statistical information other than the information contained on the cost report.

(8) Review of cost reports. HHSC reviews [~~The department staff review~~] each cost report to ensure that financial and statistical information submitted conforms to all applicable rules and instructions. The review of the cost report includes a desk audit. HHSC [~~The department~~] reviews all cost reports according to the criteria specified in §355.703 [~~§409.3~~] of this title (relating to Basic Objectives and Criteria for [~~Desk~~] Review of Cost Reports). If a rehabilitative services provider [~~agency~~] fails to complete the cost report according to instructions or rules, HHSC [~~the department~~] returns the cost report to the rehabilitative services provider [~~agency~~] for proper completion. HHSC [~~The department~~] may require information other than that contained in the cost report to substantiate reported information.

(9) On-site audits. HHSC [~~The department~~] may perform on-site audits on all rehabilitative services providers [~~provider agencies~~] that participate in the Medicaid program for rehabilitative services. HHSC [~~The department~~] determines the frequency and nature of such audits but ensures that they are not less than that required by federal regulations related to the administration of the program.

(10) Notification of exclusions and adjustments. HHSC [~~The department~~] notifies rehabilitative services providers of exclusions and adjustments to reported expenses made during desk reviews and on-site audits of cost reports [~~as specified in §409.5 of this title (relating to Notification)~~].

(11) Access to records. Each rehabilitative services provider [~~agency~~] must allow access to all records necessary to verify cost report information submitted to HHSC [~~TDMHMR~~]. Such records include those pertaining to related-party transactions and other business activities engaged in by the rehabilitative services provider [~~agency~~]. If a rehabilitative services provider [~~agency~~] does not allow inspection of pertinent records within 14 days following written notice HHSC will notify TDMHMR to place the rehabilitative services provider on vendor hold [~~from the department, a hold is placed on vendor payments~~] until access to the records is allowed. If the rehabilitative services provider [~~agency~~] continues to deny access to records, TDMHMR [~~the department~~] may terminate the rehabilitative services provider agreement with the rehabilitative services provider [~~agency~~].

(12) Record keeping requirements. Rehabilitative services providers [~~Provider agencies~~] must maintain service delivery records and eligibility determination for a period of five years or until any audit exceptions are resolved (whichever is later). Rehabilitative services providers [~~Provider agencies~~] must ensure that records are accurate and sufficiently detailed to support the financial and statistical information contained in cost reports.

(13) Failure to maintain adequate records. If a rehabilitative services provider [~~agency~~] fails to maintain adequate records to support the financial and statistical information reported in cost reports, HHSC [~~the department~~] allows 30 days for the rehabilitative services provider to bring record keeping into compliance. If a rehabilitative services provider [~~agency~~] fails to correct deficiencies within 30 days from the date of notification of the deficiency, HHSC will notify TDMHMR to [~~the department may~~] terminate the rehabilitative services provider agreement with the rehabilitative services provider [~~agency~~].

(e) Reimbursement determination. HHSC [~~The department~~] determines reimbursement in the following manner:

(1) Inclusion of certain reported expenses. Rehabilitative services providers [~~Provider agencies~~] must ensure that all requested costs are included in the cost report.

(2) Data collection. HHSC [~~The department~~] collects several different kinds of data. These include the number of units of rehabilitative services that individuals receive and the number of direct care service minutes by staff. The cost data will include direct costs, programmatic indirect costs, and general and administrative overhead costs. These costs include salaries, benefits, and other costs. Other costs include nonsalary related costs such as building and equipment maintenance, repair, depreciation, amortization, and insurance expenses; employee travel and training expenses; utilities; and [~~plus~~] material and supply expenses.

(A) Server time is reported by the type of service delivered. [~~These services are specified in §409.356 of this title (relating to Reimbursable Rehabilitative Service Definitions: Community Support Services); §409.357 of this title (relating to Reimbursable Rehabilitative Service Definitions: Day Program Services for Acute Needs); §409.358 of this title (relating to Reimbursable Rehabilitative Service Definitions: Day Program Services for Skills Training); and §409.359 of this title (relating to Reimbursable Rehabilitative Service Definitions: Day Program Services for Skills Maintenance; Plan of Care Oversight-Adults and Children).~~]

(B) Server time can be given by professionals and paraprofessionals. These include, but are not necessarily limited to physicians, psychologists, nurses, social workers, counselors, therapists, therapy associates, and paraprofessionals. HHSC [~~The department~~] collects the wages, salaries, benefits, and other costs to determine reimbursement.

(C) Programmatic indirect costs include salaries, benefits, and other costs of the rehabilitative service programs that are indirectly related to the delivery of rehabilitative services to individuals. General administrative overhead includes the salaries, benefits, and other costs of operations of the rehabilitative services provider that, while not directly part of the rehabilitative program, constitute costs which support the operations of the rehabilitative program.

(3) Reimbursement methodology. HHSC [~~The department~~] determines the [~~recommended~~] reimbursement rate using the following method:

(A) Projected and adjusted costs. Reported costs are projected and adjusted prior to calculations for determining reimbursement. HHSC [~~The department~~] uses reasonable methods for projecting costs from the historical reporting period to the prospective reimbursement period. The historical reporting period is the time period covered by the cost report. Cost projections adjust the allowed historical costs for significant changes in cost related conditions anticipated to occur between the historical cost period and the prospective reimbursement period. Significant conditions include, but are not necessarily limited

to, wage and price inflation or deflation, changes in program utilization and occupancy, modification of federal or state regulations and statutes, and implementation of federal or state court orders and settlement agreements. HHSC [~~The department~~] determines reasonable and appropriate economic adjusters[~~, as specified in §409.4 of this title (relating to Determination of Inflation Indices),~~] to calculate the projected expenses. The PCE [~~Implicit Price Deflator for Personal Consumption Expenditures (IPD-PCE)~~], which is based on data from the U.S. Department of Commerce, is the most general measure of inflation and is applied to most salaries, materials, supplies, and services when other specific inflators are not appropriate. The three payroll tax inflators, FICA (Social Security), FUTA/SUTA (federal and state unemployment) and WCI (Workers' Compensation) are based on data obtained from the Statistical Abstract of the United States, the Texas Employment Commission, and the Texas Board of Insurance, respectively. For non-state operated rehabilitative services providers, wage inflation factors are based on wage and hour survey information submitted on cost reports or special surveys or the PCE [~~IPD-PCE~~], when wage and hour survey information is unavailable. For state-operated rehabilitative services providers, the inflation factor is based on wage increases approved by the Texas Legislature. HHSC [~~The department~~] adjusts reimbursement if new legislation, regulations, or economic factors affect costs, as specified in §355.706 of this title (relating to Adjusting Reimbursement). [~~§409.6 of this title (relating to Adjusting Rates when New Legislation, Regulations, or Economic Factors Affect Costs).~~]

(B) Reimbursement determination. For each type of rehabilitative service each rehabilitative services provider's projected cost per unit of service is calculated. The mean rehabilitative services provider cost per unit of service is calculated, and the statistical outliers (those rehabilitative services providers whose unit costs exceed plus or minus (+/-) two standard deviations of the mean rehabilitative services provider cost) are removed. After removal of the statistical outliers, the mean cost per unit of service is calculated. This mean cost per unit of service becomes the recommended reimbursement per unit of service.

(C) Reimbursement setting authority. HHSC [~~The Texas Mental Health and Mental Retardation Board~~] establishes the reimbursement rate. [~~in an open meeting after consideration of financial and statistical information and public testimony.~~] HHSC[~~The board~~] sets reimbursements that, in its opinion, are within budgetary constraints, adequate to reimburse the cost of operations for an economic and efficient rehabilitative services provider, and justifiable given current economic conditions.

(D) Reviews of cost report disallowances. A rehabilitative services provider [~~agency~~] may request notification of the exclusions and adjustments to reported expenses made during either desk reviews or on-site audits, according to §355.705 of this title (relating to Notification). Rehabilitative Services providers [~~§409.5 of this title (relating to Notification). Providers~~] may request an informal review and, if necessary, an administrative hearing to dispute the action taken by HHSC [~~the department~~] under §355.707 [~~§409.7~~] of this title (relating to Reviews and Administrative Hearings).

(E) Requirements for allowable costs. Allowable costs must be:

(i) necessary and reasonable for the proper and efficient administration of rehabilitative services for which TDMHMR has contracted;

(ii) authorized or not prohibited under state or local laws or regulations;

(iii) consistent with any limitations or exclusions described in this section, federal or state laws, or other governing limitations as to types or amounts of cost items;

(iv) consistent with policies, regulations, and procedures that apply to both rehabilitative services and other activities of the organization of which the rehabilitative services [~~contracted~~] provider [~~agency~~] is a part;

(v) treated consistently using generally accepted accounting principles appropriate to the circumstances;

(vi) not allowable to or included as a cost of any other program in either the current or a prior period; and

(vii) net of all applicable credits.

(F) Reasonableness. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, HHSC [~~the department~~] considers the following:

(i) whether the cost is of a type generally recognized as ordinary and necessary for the provision of rehabilitative services or the performance under the provider agreement [~~contract~~];

(ii) the restraints or requirements imposed by generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications; and

(iii) the action that a prudent person would take in the circumstances, considering his/her responsibilities to the public, the government, employees, clients, shareholders, and/or members, and the fulfillment of the purpose for which the business was organized.

(G) Allowable costs. Costs associated with rehabilitative services for persons with mental illness for which a claim is submitted must be found to be allowable as described in federal Circular OMB-A87, with the following exceptions:

(i) Equipment is defined as having a useful life of more than one year and a value of $2,500 or more.

(ii) Legal expenses[~~expense~~] to prosecute claims against the state of Texas or the United States are unallowable.

(f) Definition. "Unit of service" or "unit of rehabilitative service" means:

(1) for community support services--a direct contact [~~(as defined in §419.453 of Title 25 (relating to Definitions))~~] lasting up to 30 minutes including the time spent by the staff person traveling to and from the location at which the direct contact occurs;

(2) for day programs--one hour; and

(3) for rehabilitative treatment plan oversight--one direct contact [~~(as defined in §419.453 of Title 25 (relating to 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 December 4, 2000.

TRD-200008379
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 424-6576

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

Texas Department of Licensing and Regulation proposes the repeal of §75.25 and amendments to §§75.1, 75.10, 75.20-75.24, 75.26, 75.30, 75.40, 75.65, 75.70, 75.80, 75.90, and 75.100 concerning air conditioning and refrigeration contractors. The proposed repeal and amendments rearrange, consolidate, and revise existing language for clarification.

The proposed amendment to §75.10 deletes a part of the definition of "Advertising or Advertisement", which is covered in the rule on Advertising; adds language to describe how "Biomedical Remediation" is accomplished; adds a definition of "Design of a system"; and clarifies the definition of "Repair work".

The justification for the proposed amendment to §75.10 is to provide clarification to industry and promote understanding of the terms used in this Chapter.

The proposed amendment to §75.20(a) deletes the 45-day requirement on receipt of an application prior to an examination date and specifies all licensing requirements must be completed within one year of the date the application is filed. The justification for the amendments to §75.20(a) is that 45 days is no longer necessary to process applications for exams, since exams are now computer-based and a time limit on completing the licensing process simplifies procedures and facilitates timely enforcement actions. The proposed amendment to §75.20(b) deletes, "who wishes to use", and adds, "uses", to provide clarification to the subsection.

The proposed amendments to §75.21 delete requirements for passage and rescheduling of an examination; clarify that an examination accommodation may be requested by an applicant; provide that applicants who do not show for exams forfeit the exam fee; and impose license sanctions and/or administrative penalties for cheating on an exam. The justification for amendments to §75.21 is that time constraints are no longer necessary for handling computer-based exams; that an accommodation based on disability will be made to those applicants that request it in order to provide full access to the examination; and that forfeiting the exam fee will reduce no-shows and allow the Department to recover examination costs.

The amendments proposed to §75.22 provide that a license is not transferable; make the wallet card the actual license; list the information to be shown on the license; provide that wall certificates will be issued to new licensees; require that air conditioning and refrigeration contracting companies request removal of the company name from the Department's records within ten business days when a licensee whose license is affiliated with the company leaves their employ; and require that any person or air conditioning and refrigeration contracting company meet standards for proper installation, service, and mechanical integrity, and ethical business practices. The justification for the amendments to § 75.22 is that the wallet card license, containing all pertinent license information, will be the recognized license and will be carried by the licensee and presented to consumers, municipal officials, suppliers and others, providing better and instantaneous license information. A non-transferable air conditioning license allows the Department to better track the licensee and prevents confusion among consumers and municipalities. The justification for requiring air conditioning and refrigeration contracting companies to notify the Department when an affiliated licensee leaves their employ is that this information is necessary to assign responsibility to the proper licensee when consumer complaints are received. The justification for requiring that any person or air conditioning and refrigeration contracting company meet standards is to clarify the Department's authority to impose administrative penalties and/or sanctions against licensed and unlicensed contractors that violate those standards.

The amendments proposed to §75.23 require that the applicant for a temporary license be an owner, partner or employee already associated with the firm; require that the application be filed within ten business days after the license became unavailable; and revise the time a temporary license is valid from six months to 30 days from date of issuance. The justification for the amendments to §75.23 is to clarify who may qualify for a temporary license; to protect the consumer by allowing work to go forward with minimal disruption; and to retain the temporary status of such a license by lowering its validity to 30 days.

The proposed amendments to §75.24 allow for license renewal up to six months after expiration; list the $50 late fee for late renewals; and remove the requirement that certificates of insurance expire more than 30 days after renewal. The justification for the amendments to §75.24 is to simplify the renewal process by allowing the Department to better process renewals received up to six months after date of expiration, and to facilitate renewals by not requiring early insurance renewals.

The proposed amendment to §75.26 adds a statement that obtaining a Certificate of Registration by fraud or false representation is grounds for an administrative sanction or penalty. The justification for the amendment to §75.26 is to prevent a person from using fraud or false representation as a basis to obtain a Certificate of Registration.

The proposed amendment to §75.30 deletes the requirement that, to qualify for exemption, an employee of a regulated public utility that performs work on air conditioning or refrigeration equipment must do so exclusively at the utility facility. The amendment applies the exemption to an employee of a public utility who performs air conditioning and refrigeration work in connection with the utility business in which the person is employed. The justification for the amendment to §75.30 is to conform the rule to the statute, which requires an exemption from the Act and these rules to employees of a regulated public utility.

The amendments proposed to §75.40 allow insurance coverage to be purchased from any insurance company rated by A.M.Best Company as B+ or higher; specify that certificates of insurance must be received within 30 days of expiration of the previous certificate and must be furnished to each municipality in which the licensee registers his/her license; and notify contractors that contracting shall not be performed by a licensee that has received a waiver of insurance. The justification for the amendments to §75.40 relating to allowable insurance carriers for licensees is that licensees will be able to choose acceptable insurance companies not licensed in Texas, removing a source of additional expense for some companies not based in Texas. The justification for requiring a certificate of insurance within 30 days of

expiration of the previous certificate is to enable the Department to determine earlier when a licensee may be uninsured, which will result in better protection of the public. The notification of contractors that public contracting shall not be performed under a license that has received a waiver of insurance will help prevent uninsured public contracting activity and result in better protection of the public.

The proposed amendment to §75.65 specify that board member expenses may only be reimbursed to the extent of the Department's appropriation for that purpose. The justification for the amendment to §75.65 is to clarify that board members will only be paid expenses as long as such appropriations have not been exhausted.

The amendments proposed in §75.70 clarify that the section applies to an air conditioning and refrigeration contracting company; remove the requirement that the license be displayed in the permanent office of the business to which it is assigned; move the provision that the license number must be on all proposals and invoices to a new subsection concerning invoices; restates the subsection making the licensee responsible for all work performed under his/her license to make it clearer; deletes the requirement that the license must be displayed at the office to which it is assigned; restates the subsection on advertising by listing exclusions to the requirement of showing the license number on all advertising instead of listing the types of advertising that require showing the license number; adds a requirement that the contractor furnish an invoice to all consumers; and clarifies the information to be provided to the Department in the event of change by the licensee. The justification for the amendments to §75.70 is that both companies and licensees must comply with these rules; that the display of a license in the business office is not necessary, since few consumers visit the contractor's office; that the Department can better track responsibility with clear notice to the licensee that he/she is responsible for all work under his/her supervision; that stating the types of advertising that do not require listing the license number will make the rule easier to understand and enforce; that consumers have a right to receive an invoice documenting work performed; and that clarifying the requirements for revising information furnished to the Department will eliminate some of the time spent requesting additional or corrected information.

The amendments to §75.80 delete the reschedule fee and delete references to the wallet card. The justification is that computerized exams do not involve reschedules, so no such fee is required, and that the wallet card is now the license.

The amendments to §75.90 clarify the language regarding administrative sanctions and penalties. The justification is that clear understanding of the section by industry will facilitate compliance with the rules of this Chapter.

The amendments to §75.100 clarify that Duct Cleaning that includes biomedical remediation requires a license under this Act, and add a subsection on Standards for the practice of air conditioning and refrigeration contracting. The justification is that the amendment will facilitate enforcement of duct cleaning companies that engage in biomedical remediation without the required license; and standards that can be applied throughout the state will give better accountability of workmanship and protection to consumers.

The justification for the repeal of §75.25 is that the provisions are previously stated in §75.24.

Jimmy Martin, Director of the Enforcement Division, Texas Department of Licensing and Regulation, has determined that for the first five-year period these sections are in effect there will be no fiscal implications for any municipality as a result of enforcing or administering the proposed changes and repeal.

Mr. Martin also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing the sections will be better enforcement of the licensing requirement, which will result in greater safety for the public.

There is no economic cost anticipated for licensee's for complying with the amendments as proposed. There will be no other additional cost to small businesses or to persons who may be required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jimmy Martin, Director of the Enforcement Division, Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or electronically: jimmy.martin@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§75.1, 75.10, 75.20-75.24, 75.26, 75.30, 75.40, 75.65, 75.70, 75.80, 75.90, 75.100

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 8861 which authorizes the Commissioner of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Article.

The Article and Code affected by the proposed amendments is Texas Revised Civil Statutes Annotated, Article 8861 and Texas Occupations Code, Chapter 51.

§75.1. Authority.

The sections in this chapter are authorized by the Air Conditioning and Refrigeration Contractor License Law, Texas Revised Civil Statutes Annotated Article 8861 (the Act), and the Texas Occupations Code, Chapter 51 [~~(Vernon 1999)~~].

§75.10. Definitions.

The following words and terms have the following meanings:

(1) Advertising or Advertisement-Any commercial message which promotes the services of an air conditioning and refrigeration contractor. [~~The terms do not include one-line listings, in directories, or signs that state only the business name.~~]

(2) Air conditioning and refrigeration subcontractor-A person or firm who contracts with a licensed air conditioning contractor for a portion of work requiring a license under the Act. The subcontractor contracts to perform a task according to his own methods, and is subject to the contractor's control only as to the end product or final result of his work.

(3) Air conditioning or heating unit-A stand-alone system with its own controls that conditions the air for a specific space and does not require a connection to other equipment, piping, or ductwork in order to function.

(4) Assumed name-As defined in the Business and Commerce Code, Title 4, Chapter 36, Subchapter A, Section 36.02.

(5) Biomedical Remediation-The treatment of ducts, plenums, or other portions of air conditioning or heating systems by

applying disinfectants, anti-fungal substances, or products designedto reduce or eliminate the presence of molds, mildews, fungi, bacteria,or other disease-causing organisms[~~contaminants.~~]

(6) Boiler-As defined in the Health and Safety Code, Title 9, Subtitle A, Chapter 755.Boilers.

(7) Business affiliation-The business organization with which a licensee elects to affiliate.

(8) Cheating-Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

(9) Contracting-Agreeing to perform work, either verbally or in writing, or performing work, either personally or through an employee or subcontractor.

(10) Cryogenics-refrigeration that deals with producing temperatures ranging from:

(A) -250 degrees F to Absolute Zero (-459.69 degrees F);

(B) -156.6 degrees C to -273.16 degrees C;

(C) 116.5 K to 0 K; or

(D) 209.69 degrees F to 0 degrees R.

(11) Design of a system-making decisions on the necessary size of equipment, number of grilles, placement and size of supply and return air ducts, and any other requirements affecting the ability of the system to perform the function for which it was designed.

(12) [~~(11)~~] Direct personal supervision-Directing and verifying the design, installation, construction, maintenance, service, repair, alteration, or modification of an air conditioning, refrigeration, process cooling, or processheating [~~a~~] product or equipment for compliance with mechanical integrity.

(13) [~~(12)~~] Employee-An individual who performs tasks assigned to him by his employer. The employee is subject to the deduction of social security and federal income taxes from his pay. An employee may be full time, part time, or seasonal. Simultaneous employment with a temporary employment agency, a staff leasing agency, or other employer does not affect his status as an employee.

(14) [~~(13)~~] Employer-One who employs the services of others, pays their wages, deducts the required social security and federal income taxes from the employee's pay, and directs and controls the employee's performance.

(15) [~~(14)~~] Full time employee-an employee who is present on the job 40 hours a week, or at least 80% of the time the company is offering air conditioning and refrigeration contracting services to the public, whichever is less.

(16) [~~(15)~~] Licensee-an individual holding a license of the class and endorsement appropriate to the work performed under the Act and these rules.

(17) [~~(16)~~] Permanent office-Any business location at which contractual agreements to perform work requiring a license under the Act are arranged and where supervising control for those contracts originate. Temporary construction sites or other locations at which employees of a licensee work under contract to provide service, maintenance and repair work are not permanent offices.

(18) [~~(17)~~] Primary process medium-a refrigerant or other primary process fluid that is classified in the current ANSI/ASHRAE Standard 34 as Safety Group A1, A2, B1, or B2. Safety Groups A3 and B3 refrigerants are specifically excluded.

(19) [~~(18)~~] Proper installation-installing air conditioning or refrigeration equipment in accordance with:

(A) applicable municipal ordinances and codes adopted by a municipality where the installation occurs;

(B) the most stringent current Uniform Mechanical Codes, Standard Mechanical Code, Standard Gas Code, International Mechanical Code, and International Fuel Gas Code in areas where no code has been adopted;

(C) the manufacturer's instructions; and

(D) all requirements for safety and the proper performance of the function for which the equipment or product was designed.

(20) [~~(19)~~] Repair work-diagnosing and repairing problems with air conditioning, commercial refrigeration, or process cooling or heating equipment, and remedying or attempting to remedy the problem. Repair work does not mean [~~simultaneous~~] replacement of the condensing unit, furnace, and evaporator coil [~~, or unitary indoor equipment~~].

§75.20. Licensing Requirements - Application and Experience Requirements.

(a) An applicant shall submit a complete application and appropriate fees. An applicant must complete all requirements, including passing the exam, within one year of the date the application is filed [~~Examination fees must accompany the application. The application must be complete meet all Department requirements, and be received by the Department not less than 45 days prior to an examination date~~].

(b) An applicant who uses [~~wishes to use~~] credit for air conditioning and refrigeration courses to fulfill up to two years of the required 36 months of experience with the tools of the trade must furnish a copy of:

(1) a transcript or diploma showing a degree in air conditioning engineering, refrigeration engineering, or mechanical engineering;

(2) a transcript, certificate or diploma in a course emphasizing hands-on training with the tools of the trade; or

(3) transcript of courses taken without earning a certificate or diploma emphasizing hands-on training with the tools of the trade. Transcripts must be from schools authorized or approved by the Texas Workforce Commission, the U.S. Department of Education, the Coordinating Board of the Texas College & University System, or other organizations recognized by the Department. Credit will be allowed at the rate of one month credit for every two months of completed training. Thirty semester hours are equivalent to six months credit of experience. For schools issuing certificates based on classroom hours, 1,200 classroom hours are equivalent to six months of credit of experience.

(c) Obtaining a license by fraud or false representation is grounds for an administrative sanction and/or penalty.

§75.21. License Requirements - Examinations.

(a) A passing grade is 70%.

(b) The exams will be administered to applicants in a format determined by the Department.

[~~(b) An applicant must pass an exam within two years of the date of the notice of eligibility to avoid reapplying.~~]

[~~(c) An applicant who does not show up for a scheduled exam may reschedule an exam up to six months after the date of the exam, provided the applicant pays the re-exam fee.~~]

[(d) An applicant who wishes to reschedule a written exam must send to the Department, a rescheduling fee and a written request to reschedule, which must be received no later than ten days before the examination.]

[(e) An applicant may request a waiver of the reschedule fee one time for an emergency reschedule. The reason for the emergency reschedule must be submitted to the Department in writing no later than ten working days after the exam for which the applicant was scheduled. The Department will determine if the circumstances constitute an emergency.]

(c) [(f)] An applicant may request an accommodation [individual arrangements for an exam,] based on disability, in accordance with the Americans with Disabilities Act, and/or language translation needs.

(1) The request must be in writing [and received by the Department at least 45 days before the exam date].

(2) Requests must specify the type of special accommodation [arrangement] needed and the reason [basis for the request].

(3) Proof of disability may be required.

(4) Language translation costs shall be paid by the applicant. [Language translation requests must specify the language in which the examination is requested.]

(5) An applicant who does not show up for a scheduled exam will forfeit the exam fee. [Language translation costs shall be paid by the applicant.]

(d) [(g)] Cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative [sanction and/or] penalty.

[(h) An applicant is not eligible to take the same exam more often than every 30 days.]

(e) [(i)] An applicant who has passed an exam for a particular class and endorsement and has been licensed or is eligible for licensure in that class and endorsement, may not retake that examination.

[(j) Applicants have six months from the date of the exam results to complete the licensure process. If six months has elapsed, an applicant desiring licensure must begin the process anew.]

§75.22. Licensing Requirements - General.

(a) Unless licensed under the provisions of the Act, with a license of the class and endorsement appropriate for the work described or advertised, it is unlawful for any person, partnership, firm, or corporation to perform or offer to perform air conditioning and refrigeration contracting or to use a license number that is not assigned to that person, partnership, firm, or corporation.

(b) All air conditioning and refrigeration contractor's licenses expire three years after the date issued, renewed, or reissued.

(c) A license number is not transferable [that has been relinquished, revoked, or expired shall not be reassigned to any licensee].

(d) Endorsement Codes are as follows: Environmental Air Conditioning-E; Commercial Refrigeration & Process Cooling and Heating-R; Combined Endorsements-C. License numbers shall have the following form: Title/Class/Number/Endorsement code-TACL/A/000000/C.

(e) A holder of a Class B license may design, install, construct, maintain, service, repair, alter, or modify individual units of 25 tons or less of cooling capacity or 1.5 million Btu/h or less of heating capacity. In a building or a complex of buildings having more than one air conditioning or heating unit, the combined cooling capacity may exceed 25 tons and heating capacity may exceed 1.5 million Btu/h, as long as each complete individual unit does not exceed the capacities stated above.

(f) Any contractor who has a Class B license with one or two endorsements may upgrade either endorsement by passing the Class A examination for that endorsement.

(g) A contractor who wishes to have endorsements of different classes must have a separate license for each endorsement. The licenses will not have concurrent expiration dates unless both are issued on the same date.

(h) A contractor may have only one endorsement per license when he has two licenses. Both licenses must have the same business affiliation and permanent and business addresses.

(i) The insurance requirement for separate licenses can be met with a single policy with limits at least as high as those required for a Class A license. A waiver of insurance for one license automatically applies to both licenses.

(j) Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for the other license.

(k) Unlicensed persons who operate as general contractors and subcontract work requiring a license under the Act may not bid or contract for a job that consists solely of work requiring a license under the Act unless the person or company has a bona fide employee whose license is assigned to the company. If a general contractor advertises that air conditioning, heating, or commercial refrigeration work is available as part of a job, the ad must state that air conditioning work will be performed by a licensed contractor.

(l) Altering a license [or ID card] in any way is prohibited and is grounds for a sanction and/or penalty.

(m) If a licensee contracts with a general contractor or a home warranty company to provide installation or service that requires a license under the Act, the licensee remains responsible for the mechanical integrity of that work.

(n) The wallet card is the actual license and will include, but is not limited to, the licensee's name, business name and address, license number, endorsements, and effective, revision (if any), and expiration dates of the license. A wall certificate will be issued to a new licensee.

(o) An air conditioning and refrigeration contracting company shall request removal of the company name from the Department's records within ten business days for any employee whose license is affiliated with the company when the employment ends.

(p) A person or an air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting shall:

(1) provide proper installation, service, or mechanical integrity;

(2) not knowingly and intentionally misrepresent necessary services, services to be provided, or services that have been provided;

(3) not make a fraudulent promise or false statement to influence, persuade, or induce an individual or a company to contract for services.

§75.23. Licensing Requirements - Temporary Licenses.

(a) A company owner or officer, whose only license holder is [suddenly] no longer available due to death, disability, or dissolution

of a partnership or corporation, may request a temporary license. A temporary license is not available to:

(1) a new unlicensed owner of a company who was not an owner or officer of the company before it was dissolved; or

(2) an employee of a sole proprietorship if the licensed owner closes or sells the business.

(b) The temporary license request shall [~~must~~] be made by an owner or partner who was affiliated with the firm at the time the license holder became unavailable. The person who will hold the temporary license shall be an owner, partner, or employee already associated with the firm, and must meet all eligibility requirements to take an examination for a license.

(c) The request for a temporary license must:

(1) be made within ten business days from the date the license holder became unavailable;

(2) [~~(1)~~] be in writing;

(3) [~~(2)~~] state the reason for the request including the circumstances and legal organization of the company involved;

(4) [~~(3)~~] include a completed application with all applicable fees; and

(5) [~~(4)~~] include a new certificate of insurance covering the company and the temporary license holder.

(d) A non-renewable temporary license shall be valid for a period of 30 days from date of issuance [~~may be granted for a period extending 30 days beyond the date of an examination, which must be taken no later than 90 days after the temporary license is granted. The temporary license period may not exceed six months~~].

(e) A temporary license number assigned by the Department must be shown on company vehicles, and must be printed or stamped on invoices and proposals. The temporary license shall be numbered by the Department as follows: Title/Class/Number/Endorsement code/Temporary Designation.

(f) The Executive Director may waive any provision under this section and issue a temporary license for just cause.

§75.24. Licensing Requirements - Renewals.

(a) A license that has expired for a period of less than six months may be reissued upon meeting the conditions of a license renewal [~~A license that is not renewed within 30 days after expiration and has been expired for a period of less than six months may be reissued upon meeting the conditions of a license renewal.~~]

(b) The request for renewal must be postmarked by the expiration date. Any request postmarked after the expiration date will be assessed a late fee of $50.

(c) A renewal request must contain:

(1) the licensee's name, license number, permanent address and telephone number;

(2) the [~~business~~] name, physical address and telephone number of the business with which the licensee is affiliated;

(3) all appropriate fees; and

(4) evidence of the applicable insurance requirement if a Certificate is not on file, including any past due Certificates, or a request for a waiver of insurance if applicable [~~the current insurance expires less than 30 days after renewing~~].

§75.26. Certificate of Registration.

(a) Persons exempt under Article 8861, Sections 6(a)(2) and 6(a)(4) who purchase refrigerants and equipment containing refrigerants shall first request a Certificate of Registration on an application form provided by the Department. The Certificate of Registration fee shall accompany the application.

(b) Persons who purchase refrigerants or equipment containing refrigerants shall, at the time of purchasing such items, provide to the seller a picture identification along with the Certificate of Registration.

(c) The Certificate of Registration remains valid if the exempt person changes employment and continues to perform work that is exempt under the same section of the Act. Changes in employment and leaving or re-entering the exempt work category must be reported by the certificate holderto the Department within 30 days of the change.

(d) A Certificate of Registration is invalid if the exempt person ceases to be employed as defined under Section 6 (a)(2) or 6 (a)(4) of the Act.

(e) A Certificate of Registration does not:

(1) replace any other requirement for purchasing refrigerant products under the Federal Clean Air Act amendments of 1990 and federal administrative rules adopted under that section; nor

(2) authorize the certificate holder to perform air conditioning and refrigeration work that is not covered by the appropriate exemption from licensing in the Act.

(f) A flammable refrigerant or refrigerant substitute that contains a liquid petroleum-based product that has been listed as acceptable by the Environmental Protection Agency, may be sold and used in accordance with rules issued by the Environmental Protection Agency.

(g) Equipment containing a half-ounce or less of refrigerant may be purchased without a license or a Certificate of Registration.

(h) Obtaining a Certificate of Registration by fraud or false representation is grounds for an administrative sanction and/or penalty.

§75.30. Exemptions.

Licensure requirements under the Act and these Rules do not apply to:

(1) persons who conduct air conditioning and refrigeration contracting, are employed by a regulated public utility facility and perform those services in connection with the utility business in which the person is employed [~~exclusively for the utility facility~~];

(2) an individual who performs air conditioning and refrigeration maintenance work on equipment and property owned by him if he does not engage in the occupation of air conditioning and refrigeration contracting for the general public. This exemption applies only to the property owner and not to others who may attempt to assist the owner.

(3) those who hold a valid Certificate of Authorization issued by the American Society of Mechanical Engineers or The National Board of Boiler and Pressure Vessel Inspectors that are:

(A) appropriate for the scope of work to be performed, and

(B) performed solely on boilers as defined in the Health and Safety Code, Title 9, Subtitle A, Chapter 755. Boiler; or

(4) a person who performs air conditioning contracting on unducted fireplace stoves.

§75.40. Insurance Requirements.

(a) Class A licensees shall maintain commercial general liability insurance at all times during a license period:

(1) of at least $300,000 per occurrence (combined for property damage and bodily injury);

(2) of at least $300,000 aggregate (total amount the policy will pay for property damage and bodily injury coverage);

(3) of at least $300,000 aggregate for products and completed operations, and

(4) with a deductible no higher than $1,000.

(b) Class B licensees shall maintain commercial liability insurance at all times during a license period:

(1) of at least $100,000 per occurrence (combined for property damage and bodily injury);

(2) of at least $100,000 aggregate (total amount the policy will pay for property damage and bodily injury coverage);

(3) of at least $100,000 aggregate for products and completed operations, and

(4) with a deductible no higher than $500.

(c) Insurance must be obtained from an admitted company, [~~or~~] an eligible surplus lines carrier, as defined in the Texas Insurance Code, Article 1.14-2 ,or other insurance companies that are rated by A. M. Best Company as B+ or higher.

(d) If a deductible exceeds the level allowed for a Class A or a Class B license, the contractors' business affiliation is considered to be self-insured. Any contractor whose business affiliation is self-insured must provide an affidavit of responsibility and a certified financial statement showing a net worth of at least the amount required by the deductible for that particular license.

(e) A license applicant or licensee shall furnish to the Department a completed certificate of insurance on a form provided by the Department not later than 30 days after expiration of the previous certificate. The certificate shall be furnished to each municipality in which the licensee registers his/her license.

(f) Insurance coverage specified in this section shall be maintained during the license period.

(g) Requests to waive the insurance requirements because the license holder does not contract with the public shall:

(1) be submitted in writing to the Department;

(2) contain a detailed explanation of the conditions under which the waiver is requested; and

(3) be accompanied by a confirmation of employment by the current employer when working under the license of another contractor as an employee.

(h) Air conditioning and refrigeration contracting shall not be performed, or offered to be performed, with the public by a licensee that has received a waiver of insurance.

§75.65. Advisory Board.

(a) The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the Executive Director on adopting rules, enforcing and administering the Act, and setting fees.

(b) Recommendations of the Board will be transmitted to the Executive Director through the General Counsel.

(c) Board meetings are called by the chair. Meetings in excess of one every six months may be authorized by the Executive Director.

(d) Expenses reimbursed to board members is limited to authorized expenses incurred while traveling to and from board meetings.

(e) Expenses paid to board members shall be limited to those allowed by the State of Texas Travel Allowance Guide, the Texas Department of Licensing and Regulation policies governing employee travel allowances, and the General Appropriations Act.

(f) Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose , and only to the extent of the appropriation.

§75.70. Responsibilities of the Licensee and the Air Conditioning and Refrigeration Contracting Company.

(a) The licensee shall:

(1) if affiliated with a business, choose one business affiliation that will use the licensee's license;

(2) be a bona fide employee or [~~,~~] owner [~~, or officer~~] of the business affiliation, and must work full time at the business affiliation, or permanent office of the business affiliation;

(3) use his license for one business affiliation and one permanent office at any given time;

(4) furnish the Department with his or her permanent mailing address and the name, physical address, and telephone number of the business affiliation; and

(5) furnish to the Department, copies of assumed name registrations.

(b) A licensee may subcontract portions of work requiring a license under the Act to unlicensed persons, firms, or corporations as long as:

(1) the licensee actively provides work or service which requires a license, either in person or with the licensee's bona fide employees;

(2) the work or service provided in person or with the licensee's bona fide employees consists of more than accepting a contract or request for service, scheduling the work, and providing supervision of the work; and

(3) the licensee is ultimately responsible to the customer for all work performed by the subcontractor.

(c) The design of a system may not be subcontracted to an unlicensed person, firm or corporation.

(d) A licensee who subcontracts with an air conditioning and refrigeration contractingcompany other than his own, must work under the license of the other air conditioning and refrigeration business. The work must be billed by the other air conditioning and refrigeration contracting company, and the licensee working as a subcontractor must be paid by the other company. The licensee who is the contractor is responsible for all subcontracted work.

(e) Each air conditioning and refrigeration contracting company shall have a licensee employed full time in each permanent office operated in Texas. All work requiring a license under the Act shall be under the direct personal supervision of the licensee for that office [~~The licensee's license number shall appear on all proposals and invoices for that office~~].

(f) The licensee is responsible under the Act for all work performed under his/her supervision, regardless of whether or not the owners, officers, or managers of the air conditioning and refrigeration contracting company [~~If a licensee is employed as the license holder for the company or the permanent office of that company, the licensee is responsible for work performed under his supervision. If the owners, officers, or managers of the company do not~~] allow the licensee the

authority to supervise, train, or otherwise control compliance with the Act [~~, the licensee is still responsible under the Act~~].

(g) If an air conditioning and refrigeration contracting company uses locations other than a permanent office, those locations shall be used only to receive instructions from the permanent office on scheduling of work, to store parts and supplies, and/or to park vehicles. These locations may not be used to contract air conditioning sales or service. The air conditioning and refrigeration contracting company shall provide the address of these other locations to the Department no later than 30 days after the locations are established or changed.

(h) A licensee may not permit a person or any company with which his or her license is not affiliated to use his or her license for any purpose.

~~[(i) Each licensee shall display his/her license at the permanent office to which it is assigned.]~~

(i) [~~(j)~~] Each licensee and air conditioning and refrigeration contracting company shall display the license number and company name in letters not less than two inches high on both sides of all vehicles used in conjunction with air conditioning and refrigeration contracting. When an unlicensed subcontractor is at a job site not identified by a marked vehicle, the site shall be identified either by a temporary sign on the subcontractor's vehicle or on a sign visible and readable from the nearest public street containing the contractor's license number and company name.

(j) [~~(k)~~] All advertising by licensees and air conditioning and refrigeration contracting companies designed to solicit air conditioning or refrigeration business shall include the licensee's license number. The following advertising does not require [~~Advertising which requires~~] the license number [~~includes~~]:

(1) nationally placed television advertising, in which a statement indicating that license numbers are available upon request is used in lieu of the licensee's license number;

(2) telephone book listings that contain only the name, address, and telephone number;

(3) manufacturers' and distributor's telephone book trade ads endorsing an air conditioning and refrigeration contractor;

(4) telephone solicitations, provided the solicitor states that the company is licensed by the state. The license number must be provided upon request of a consumer.

(5) promotional items of nominal value such as ball caps, tee shirts, and other gifts;

(6) letterheads and printed forms for office use; and

(7) signs located on the contractor's permanent business location.

~~[(1) printed material]~~

~~[(2) television ads, except that in nationally placed television advertising, a statement indicating that license numbers are available upon request may be used in lieu of the licensee's license number;]~~

~~[(3) newspaper ads;]~~

~~[(4) telephone book ads, except:]~~

~~[(A) telephone book listings that contain only the name, address, and telephone number;]~~

~~[(B) manufacturers' and distributor's ads endorsing an air conditioning and refrigeration contractor;]~~

~~[(5) business cards;]~~

~~[(6) billboards;]~~

~~[(7) telephone solicitations, except that the statement that the company is licensed by the state may be substituted unless the consumer requests the number;]~~

~~[(8) proposals, quotations, and invoices; and]~~

~~[(9) electronic media such as the Internet and websites, and solicitation through electronic mail.]~~

~~[(l) Items intended to attract business, other than promotional items of nominal value such as ball caps, tee shirts, and other gifts, must include the license number. Letterheads and printed forms for office use are not required to have the license number included. Signs located outside the contractor's permanent business location are not required to have the license number displayed.]~~

(k) [~~(m)~~] An invoice shall be provided to the consumer for all work performed. The company name, address, and phone number shall appear on all proposals and invoices. The licensee's license number shall appear on all proposals and invoices for that office. The [~~A licensee must have the~~] following information: "Regulated by The Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599" shall be listed on:

(1) proposals and invoices;

(2) written contracts; and

(3) a sign prominently displayed in the place of business if the consumer or service recipient may visit the place of business for service.

(l) [~~(n)~~] A licensee or an air conditioning and refrigeration contracting company that also acts as a general contractor may provide a one-time notice stating the information above to customers for whom they provide services requiring a license under the Act.

(m) [~~(o)~~] If information provided to the Department by the licensee changes, the licensee shall:

(1) notify the Department, in writing, within 30 days of any change in name, permanent mailing address, business affiliation, business location, or business telephone number; and

(2) [~~revise the license~~]if the information is printed on the license [~~by~~]:

(A) return [~~returning~~] the current original license to the Department;

(B) pay [~~paying~~] the appropriate revision fee required in Section 75.80 of this title (relating to Fees); and

(C) provide [~~providing~~] a revised insurance certificate if the business affiliation name or address has changed.

(n) [~~(p)~~] The permanent address shall be considered the licensee's permanent mailing address and address of record. All correspondence from the Department will be mailed to that address.

§75.80. Fees.

(a) Exam Fees. Class A and Class B exam fees are:

(1) application fee is $50 per applicant; the application fee is not refundable; and

(2) exam and re-exam fee is $50 for each exam requested. [~~; and~~]

~~[(3) reschedule fee is $30.]~~

(b) License Fees. License fees are:

(1) Class A or B initial license or renewal fee for three years is $350; and

(2) late renewal fee is $50.

(c) Issuance of a revised or duplicate license [~~Lost, revised, or duplicate license, or wallet card~~] is $25.

(d) The addition of an endorsement to an existing license is $25 (current original license [~~and wallet card~~] must be returned). This fee may be waived if the reprint coincides with a renewal or revision, for which required fees are paid.

(e) Certificate of Registration fee is $25.

§75.90. Sanctions - Administrative Sanctions/Penalties.

A person that [~~If a person~~] violates Texas Revised Civil Statutes Annotated, Article 8861 [~~(Vernon 1999)~~], or a rule, or order of the Executive Director or Commission [~~commission~~] relating to the Act, shall be subject to the imposition of [~~proceedings may be instituted to impose~~] administrative sanctions and/or [~~recommend~~] administrative penalties in accordance with the Act or the Texas Occupations Code, Chapter 51 [~~(Vernon 1999)~~] and 16 Texas Administrative Code, Chapter 60 [~~(1999)~~] of this title (relating to the Texas Department of Licensing and Regulation).

§75.100. Technical Requirements.

(a) Electrical Connections.

(1) On new construction of environmental air conditioning, commercial refrigeration, and process cooling or heating systems, licensees shall connect the appliance to the electrical line or disconnect that is provided for that purpose.

(2) Licensees may replace and reconnect environmental air conditioning, commercial refrigeration, process cooling or heating systems, or component parts of the same or lesser amperage. On replacement environmental air conditioning, commercial refrigeration, process cooling or heating systems where the electrical disconnect has not been installed and is required by the current National Electrical Code, the licensee may install a disconnect directly adjacent to or on the replacement system and reconnect the system.

(3) Control wiring of 50 volts or less may be installed and serviced by a licensee.

(4) All electrical work shall be performed in accordance with standards at least as strict as that established by the current National Electrical Code.

(b) Piping.

(1) Fuel gas piping for new or replaced environmental air conditioning, commercial refrigeration, or process cooling or heating systems may be installed by a licensee. Fuel gas piping by a licensee is limited to the portion of piping between the appliance and the existing piping system, connected at an existing shut-off valve for such use. Existing piping systems, stops, or shut-off valves shall not be altered by a licensee.

(2) Drain piping associated with environmental air conditioning, commercial refrigeration, or process cooling or heating systems may be installed by a licensee if the connection is on the inlet side of a properly installed trap. Such drain piping shall be installed in accordance with applicable plumbing and building codes.

(3) Mechanical piping associated with environmental air conditioning, commercial refrigeration, or process cooling or heating systems shall be installed by a licensee.

(c) Duct cleaning.

(1) Duct cleaning and air quality testing, including biomedical testing may be performed by an unlicensed person or company if:

(A) the task is limited to the air distribution system, from the discharge of the unit to the inlet of the unit;

(B) no cuts are made to ducts or plenums;

(C) no changes are made to electrical connections;

(D) the only disassembly of any part of the system is opening or removal of access panels or doors, return air grills, or registers that are removable without cutting or removing any other part of the system; and

(E) coils are cleaned in place and can be accessed without cutting or disassembly of any part of the system , and no biomedical remediation is performed.

(2) Biomedical testing may be performed by an unlicensed person or company. Biomedical remediation requires a license.

(d) Process Cooling and Heating.

(1) Process cooling and heating work does not include cryogenic work.

(2) Process cooling and heating is limited to work performed on piping and equipment in the primary closed loop portions of processing systems containing a primary process medium. Once a primary closed loop process system has been deactivated and rendered inert, a non-licensed person may perform repairs on piping, heat exchangers, and vessels.

(e) Standards

(1) The standard for the practice of air conditioning and refrigeration in a municipality is the code the municipality adopted by ordinance, provided that the ordinance does not make the code less strict than the 2000 edition of the code adopted.

(2) The standard for the practice of air conditioning and refrigeration in an area where no code has been adopted is the least strict applicable provision of the 2000 International Code or the 2000 Uniform Mechanical Code.

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

Filed with the Office of the Secretary of State, on November 29, 2000.

TRD-200008281
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-7348

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16 TAC §75.25

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

The repeal is proposed under Texas Revised Civil Statutes Annotated, Article 8861, which authorizes the Commissioner of the

Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the article.

The Article and Code affected by the repeal is Texas Revised Civil Statutes Annotated, Article 8861 and Texas Occupations Code, Chapter 51.

§75.25. Licensing Requirements - Reissuance.

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

Filed with the Office of the Secretary of State, on November 29, 2000.

TRD-200008284
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.11

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.11, concerning Licensed Psychologist. The amendment is being proposed in order to clarify the requirements necessary to obtain licensure.

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

Ms. Lee 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 to ensure that only qualified and competent applicants receive licensure and to allow greater access to qualified and experienced psychologists who are in good standing with other jurisdictions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule as proposed.

Comments on the proposal may be submitted to Brian Creath, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

This amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles or codes.

§463.11. Licensed Psychologist.

(a) Application Requirements by Provisional Licensure. This application is provided free of charge to the applicant who has taken the oral examination. Upon passage of the oral examination, the applicant may submit the licensed psychologist application. An application for licensure as a psychologist includes, in addition to the requirements set forth in §463.5(1) of this title (relating to Application File Requirements):

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

(3) Documentation of two years of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal year must be documented by the Director of Internship Training.

(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.

Filed with the Office of the Secretary of State, on November 28, 2000.

TRD-200008236
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §§465.7, 465.22, 465.38

The Texas State Board of Examiners of Psychologists proposes an amendment to §§465.7, 465.22, and 465.38, concerning Rules of Practice. The amendments are being proposed in order allow the public to readily identify the Board as the place to send complaints regarding licensees who provide psychological services on the internet; to delineate requirements for releasing records to clients; and to clarify for licensees that state and federal statutes supercede Board rules.

Sherry L. Lee, 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 or administering the rules.

Ms. Lee 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 to protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Brian Creath, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendments do not affect other statutes, articles, or codes.

§465.7. Display of License/Renewal Permit.

Licensees must display the original license or an official duplicate issued by the Board and the current renewal permit in a conspicuous place in the principal office where the licensee practices. Any reproduction displayed in lieu of those cited in this section is unauthorized by the Board. Licensees who provide psychological services through the internet shall display an image of their current license/renewal permit in a prominent and easily accessible location on the website.

§465.22. Psychological Records, Test Data, and Test Protocols.

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

(c) Access to Records and Test Data.

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

~~[(4) A licensee may impose a reasonable fee for review and/or reproduction of records provided that the licensee shall not withhold records because of an outstanding balance owed by a client, patient or other recipient of services.]~~

(4) [~~(5)~~] Test date are not part of a patient's or client's record. Test data are not subject to subpoena. Test data shall be made available only to another qualified mental health professional and only upon receipt of written release from the patient or client for purposes of continuity of care or pursuant to a court order.

(5) [~~(6)~~] Licensees cooperate in the continuity of care of patients and clients by providing appropriate information to succeeding qualified service providers as permitted by applicable Board rule and state and federal law.

(6) [~~(7)~~] Licensees who are temporarily or permanently unable to practice psychology shall implement a system that enables their records to be accessed in compliance with applicable Board rules and state and federal law.

(7) Access to records may not be withheld due to an outstanding balance owed by a client for psychological services provided prior to the patient's request for records. However, licensees may impose a reasonable fee for review and/or reproduction of records and are not required to permit examination until such fee is paid, unless there is a medical emergency or the records are to be used in support of an application for disability benefits.

(8) No later than 15 days after receiving a written request from a patient to examine or copy all of part of the patient's mental health records, a psychologist shall:

(A) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or

(B) inform the patient in writing that the information does not exist or cannot be found; or

(C) provide the patient with a signed and dated statement that having access to the mental health records would be harmful to the patient's physical, mental or emotional health. The written statement must specify the portion of the record being withheld, the reason for denial and the duration of the denial.

(d) - (e) (No change.)

§465.38. Psychological Services in the Schools.

This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(1) - (5) (No change.)

(6) Conflict Between Laws and Board Rules. In the event of a conflict between state or federal statutes [~~(such as the Family Education Rights and Privacy Act or the Individuals with Disabilities Education Act)~~] and Board rules, state or federal statutes control.

(7) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

(A) Texas Education Code;

(B) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232q;

(C) Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq;

(D) Texas Public Information Act ("Open Records Act"), Texas Government Code, Chapter 552;

(E) Section 504 of the Rehabilitation Act of 1973.

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

Filed with the Office of the Secretary of State, on November 28, 2000.

TRD-200008239
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 305-7700

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.2

The Texas State Board of Examiners of Psychologists proposes an amendment to §469.2 concerning Complaint Procedure Notification. The amendment is being proposed in order to allow the public to readily identify the Board as the place to send complaints regarding licensees who provide psychological services on the internet.

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

Ms. Lee 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 to protect the public. There will be no effect on small businesses. There is no anticipated economic

cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brian Creath, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§469.2. Public Complaint Notification Statement[~~Complaint Procedure Notification~~].

(a) Methods of Notification. The board and its licensees shall provide notification to the public that complaints can be filed with the Board by publishing the Board's name, its mailing address, and telephone number by the following method:

(1) Displaying a sign in a prominent location, on a wall in all rooms where psychological services are conducted in a position that is reasonably likely to be viewed by individuals occupying the room, on paper of no less than 8-1/2 inches by 11 inches in size, with the Board approved notification statement printed in black. Licensees providing psychological services through the internet shall display an image of the notification statement in a prominent and easily accessible location within the website. The Board approved notification statement must be printed in both English and Spanish.

(A) The Board approved English notification statement reads as follows: "Be it known that the Texas State Board of Examiners of Psychologists receives questions and complaints regarding the practice of psychology. For assistance please contact: Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700, or 800-821-3205."

(B) The Board approved Spanish notification statement reads as follows: "Se desea informar que la Comisión Estatal Examinadora de Psicólogos de Texas recibe toda clase de consultas y quejas sobre el ejercicio profesional de la psicología en el Estado de Texas. Si usted necesita [~~de~~]este servicio, comuníquese con: Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700 o 800-821-3205."

(2) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State, on November 28, 2000.

TRD-200008237
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 305-7700

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CHAPTER 471. RENEWALS

22 TAC §471.6

The Texas State board of Examiners of Psychologists proposes new rule §471.6, concerning Renewal Penalty Waiver for Licensees on Military Deployment. The new rule is being proposed in order to agree with Texas Occupations Code, Section 55.002.

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

Ms. Lee 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 to not penalize licensees who serve in the military and are deployed. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new rule as proposed.

Comments on the proposal may be submitted to Brian Creath, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

This rule is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

§471.6. Renewal Penalty Waiver for Licensees on Military Deployment.

Licensees who fail to renew their licenses in a timely manner because of active United States military deployment outside Texas at the time of renewal shall not receive a late fee or other penalty imposed by the Board for late renewal if the following conditions are met. Within 90 days of return from active duty deployment, the licensee must provide to the Board evidence of meeting renewal requirements and verification to the Board from the licensee's commanding officer of the dates the licensee began and ended the deployment outside Texas which occasioned the late licensure renewal.

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

Filed with the Office of the Secretary of State, on November 28, 2000.

TRD-200008238
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 305-7700

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.54

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.54 concerning Savings Provisions and Disposition Table.

The amendment to §501.54 will allow the conversion chart to include correct rule numbers.

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 this rule is merely a conversion chart.

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 this rule is merely a conversion chart.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because this rule is merely a conversion chart.

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 conversion chart will be accurate.

The probable economic cost to persons required to comply with the amendment will be zero because this rule is merely a conversion chart.

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 request 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 Friday December 29, 2000. 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 this rule is merely a conversion chart.

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 amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) 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.

§501.54. Savings Provisions and Disposition Table

(a) Repeal or amendment of Chapter 501 shall not abate any pending claims, liabilities or prosecutions.

(b) The following table shows the disposition of board rules in Chapter 501:
Figure: 22 TAC §501.54(b)

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

Filed with the Office of the Secretary of State, on November 29, 2000.

TRD-200008270
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 305-7848

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.70

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.70 concerning Independence.

The amendment to §501.70 will amend subsection (c)(3) to clarify that independence will be considered to be impaired if the CPA receives compensation for other than professional services performed during an audit engagement.

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 Board is already enforcing the substance of this rule through its enforcement of professional standards.

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 Board is already enforcing the substance of this rule through its enforcement of professional standards.

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 Board is already enforcing the substance of this rule through its enforcement of professional standards.

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 will be a clear understanding that receipt of other compensation might impair independence.

The probable economic cost to persons required to comply with the amendment will be zero because the Board is already enforcing the substance of this rule through its enforcement of professional standards.

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 Friday December 29, 2000. 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 Board is already enforcing the substance of this rule through its enforcement of professional standards.

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 amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) 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.

§501.70. Independence.

(a) A certificate or registration holder must be independent in fact and in appearance when performing an engagement in which the certificate or registration holder will issue a report on financial statements of any client, except for a report in which lack of independence may be cured by disclosure under applicable professional standards.

(b) Independence will be considered to be impaired if, for example, during the period of the professional engagement or at the time of expressing an opinion, the certificate or registration holder:

(1) had or was committed to acquire any direct or material indirect financial interest in the client;

(2) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client;

(3) had any joint closely-held business investment with the client or any officer, director, partner, or principal stockholder thereof which was material in relation to the net worth of the certificate or registration holder; or

(4) had any loan to or from the client or any officer, director, partner, or principal stockholder thereof other than certain "grandfathered loans" and "other permitted loans" which will not be considered to impair independence.

(A) Grandfathered loans-Loans from a financial institution made under that institution's normal lending procedures, terms, and requirements, and that meet the other specified conditions stated herein. Grandfathered loans must, at all times, be current as to all terms and such terms shall not be renegotiated after the latest of the dates in clauses (i)-(iv) of this subparagraph. Grandfathered loans include those which:

(i) existed as of January 1, 1997;

(ii) were obtained from a financial institution prior to its becoming a client requiring independence;

(iii) were obtained from a financial institution for which independence was not required and that were later sold to a client for which independence is required; or

(iv) were obtained from a firm's financial institution client requiring independence, by a borrower prior to his or her becoming a member of the firm or registration holder, such as:

(I) loans obtained by the certificate or registration holder which are not material to the net worth of the borrower;

(II) home mortgages; and

(III) other secured loans in which the collateral must equal or exceed the remaining balance of the loan at January 1, 1997, and at all times thereafter.

(B) Other permitted loans-Personal loans obtained from a financial institution client from which independence is required which were made under that institution's normal lending procedures, terms and requirements. Such loans must, at all times, be kept current as to all terms. Other permitted loans include:

(i) automobile loans and leases collateralized by the automobile;

(ii) loans of the surrender value under terms of an insurance policy;

(iii) loans fully collateralized by cash deposits at the same financial institution; and

(iv) credit cards and cash advances on checking accounts with an aggregate balance not paid currently of $5,000 or less.

(c) Independence also will be considered to be impaired if, during the period covered by the financial statements, during the period of the professional engagement, or at the time of issuing his report, the certificate or registration holder:

(1) was connected with the client as a promoter, underwriter, or voting trustee, a director or officer, or in any capacity equivalent to that of a member of management or of any employee;

(2) was a trustee for any pension or profit-sharing trust of the client;

(3) receives [~~from a third party,~~] or had a commitment to receive from the client or third party, with respect to services or products procured or to be procured by or for the client, [~~other~~] compensation for other than the performance of professional services [~~which was~~] is material in relation to the aggregate normally-recurring fees charged annually to the client for reports on financial statements;

(4) had a commitment from the client for a contingent fee in violation of §501.72 of this title (relating to Contingency Fees); or

(5) had an engagement to provide for the supervision of an individual as provided for in §511.124(a)(1) of this title (relating to Acceptable Supervision).

(d) Independence will be presumed to be impaired if the certificate or registration holder performs audit services, other than for charitable organizations, for a fee that is less than the direct labor cost reasonably expected, at the time the engagement was accepted, to be incurred in performing such services. For this purpose direct labor costs means the total compensation of the person or persons expected to perform the service for the time they are expected to serve on the audit plus all payroll expenses related to such compensation.

(e) A certificate or registration holder's independence may be impaired by a close relative's association with a client. Close relatives are defined as spouses and dependent persons, whether or not related, and defined as dependent and non-dependent children, grandchildren, stepchildren, brothers, sisters, parents, grandparents, parents-in-law, and their respective spouses.

(1) Certificate and registration holders must consider whether the strength of personal and business relationships between the certificate or registration holder and the close relative would lead a reasonable person who is aware of all the facts to conclude that the situation poses an unacceptable threat to the certificate or registration holder's objectivity and appearance of independence. In reaching this conclusion, the certificate or registration holder should consider the specific association with the client.

(2) A certificate or registration holder's independence will be presumed to be impaired with respect to a client if:

(A) during the period of the professional engagement or at the time of expressing an opinion, the certificate or registration holder participating in the engagement has knowledge of a close relative who has a material financial interest in the client;

(B) during the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion:

(i) the certificate or registration holder participating in the engagement has a close relative who could exercise significant influence over the operative, financial, or accounting policies of the client or is otherwise employed in a position in which the close relative's activities are normally an element of or subject to significant internal accounting controls;

(ii) a proprietor, shareholder, or individual in a managerial position in a certificate or registration holder's office, has a close relative who could exercise significant influence over the client's operating, financial, or accounting policies, if that proprietor, shareholder or individual participates in a significant portion of the engagement.

(f) The examples of impaired independence described in subsections (b)-(e) of this section are not intended to be all-inclusive.

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

Filed with the Office of the Secretary of State, on November 29, 2000.

TRD-200008267
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 305-7848

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SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.85

The Texas State Board of Public Accountancy (Board) proposes new rule §501.85 concerning Complaint Notice.

The new rule §501.85 will relocate a former board rule that requires CPAs to inform potential complainants of the Board's existence and addresses.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero because the proposed rule requires no additional action by the state.

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 proposed rule requires no additional action by the state or local governments.

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 proposed rule requires no additional action by the state.

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 new rule will be that potential complainants will be notified by their CPA of the existence of the Board and its addresses.

The probable economic cost to persons required to comply with the new rule will be zero or negligible because CPA firms are only required to make available to potential complainants a very short statement and addresses.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the new rule will not affect a local economy.

The Board requests comments on the substance and effect of the new rule from any interested person. Comments must be received at the Board no later than noon on Friday December 29, 2000. 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 new rule will not have an adverse economic effect on small businesses because the proposed rule requires no additional action by small businesses.

The Board specifically invites comments from the public on the issues of whether or not the new rule will have an adverse economic effect on small business; if the new 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 new rule is to be adopted; and if the new 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 new 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 new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) 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 new rule.

§501.85. Complaint Notice.

When a firm receives a complaint that an alleged violation of the Act or Rules of Professional Conduct has occurred, a certificate or registration holder shall provide to the complainant a statement that: Complaints concerning Certified Public Accountants may be addressed in writing to the Texas State Board of Public Accountancy at 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3900, telephone (512) 305-7800, email to enforcement@tsbpa.state.tx.us, or fax (512) 305-7854.

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

Filed with the Office of the Secretary of State, on November 29, 2000.

TRD-200008268
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 305-7848

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PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER C. LICENSES AND LICENSING PROCESS

22 TAC §781.301

The Texas State Board of Social Worker Examiners (board) proposes an amendment to §781.301 allowing social work associates (SWAs), licensed social workers (LSWs), and licensed master social workers (LMSWs) to engage in private independent practice as defined in 22 TAC §781.102 by providing case management services for the Texas Health Steps Medical Case Management (THSteps MCM) Program administered by the Texas Department of Health (department).

In response to a class action lawsuit, Frew v. Gilbert, brought on behalf of all Texas Medicaid enrollees age 0-21 eligible for Early and Periodic Screen, Diagnosis and Treatment (EPSDT), the department entered into a consent order in February 1996, to implement changes to the THSteps program. THSteps is the Texas name for the federally mandated EPSDT program. One component of the program involves an outreach to recruit medical case managers to help Medicaid recipients under 21 years of age obtain federally mandated health services. The THSteps MCM rules provide that case management services may be provided by all levels of Texas licensed social workers as well as other licensed professionals. The new case management services began in January 1998, and are contained in rules adopted by the THSteps MCM program in November 1997.

Thereafter, the board questioned whether the eligibility requirements for medical case managers are in conflict with the rule implementing the Texas Professional Social Work Act at 22 TAC §781.102 that defines private independent practice. Under the THSteps MCM rules, providers may be licensed social workers at any level as long as they have a bachelor's degree. Under the Social Work rules, social workers who function as THSteps medical case managers are engaging in "private, independent practice" and only those licensed as a LMSW-ACP or LMSW-AP may engage in the private, independent practice of social work under 22 TAC §781.301(b). Another issue to be considered is those licensed social workers who meet THSteps Medical Case criteria to participate as case managers may work as independent Medicaid providers and direct bill a third party payor under their own Medicaid provider number unique to the THSteps MCM program. The THSteps MCM case manager bills the Medicaid Claims Administrator, National Heritage Insurance Corporation (NHIC), as an independent Medicaid provider for third party reimbursement for case management services rendered. The model of the independent Medicaid provider working in an unsupervised setting who sees clients in his/her own office or in the client's home, and who bills directly for reimbursement to clients or to third party payors, fits the criteria for the practice model the board has interpreted as private independent practice. The board agrees that the services provided by this program are appropriate for SWAs, LSWs and LMSWs to perform. The issue is not the setting in which the case manager is providing these services or the agency who is responsible for supervising and overseeing the case manager; it is the case manager who is providing this on their own with no agency oversight or supervision. The board agrees that the case management services offered by the THSteps MCM program are appropriate for SWAs, LSWs, and LMSWs to provide.

Data provided by the THSteps MCM program documents that approximately 110,720 of the 1.2 million of Texas children (approximately 7%) are potentially eligible for the services provided by this program. THSteps MCM also documented the limited number of LMSW-ACPs or LMSW-APs (ACP/AP) throughout the state to service the large number of potential recipients of this program. There are only approximately 5,000 ACP/AP licensees in Texas. The rural areas have an even greater need for having other than ACPs/APs provide the medical case management services as the majority of ACP/AP license holders reside in more urban areas. In fact, there are several counties in Texas that do not have any ACPs/APs as county residents. In addition, according to the THSteps staff, very few licensed ACPs/APs have applied to be medical case management providers. This type of work probably will not draw a large number of ACPs/APs because of the reimbursement rates and counties of residence of ACP/APs and eligible children. THSteps MCM staff believes that non ACP/AP Social Workers have historically provided case management services and the licenses they hold are a good match for meeting the needs of the children in this program.

Therefore, a documented need exists to justify this rule change. This need is based on the fact that the federally mandated court order in the Frew case requires the department to make available case management services to every county or clusters of counties where Medicaid recipients reside. By using only APs and ACPs, the department cannot recruit the needed number of

providers. Although the board determined that the case management services are "private independent practice" as defined in its rules, it believes that an exception should be allowed to its rule in §781.301(b). The board bases its conclusion on these factors: (1) the pressing and ongoing medical need, (2) social workers at all levels may be qualified to provide the services, (3) there is training and quality assurance oversight provided by TDH, and (4) the third party Medicaid billing number is limited to only the THSteps MCM program. This rule does not and will not affect those social workers that are employed by an agency to provide the identified services of the THSteps MCM program.

Andrew T. Marks, LMSW, Executive Director, has determined that for the first five years the section as proposed is in effect, if adopted, there would be no fiscal implications for state or local governments. However, if the proposed rule is not adopted there could be fiscal impact on state and local government due to increased unemployment claims by ineligible social workers. Additionally, the board will endure costs associated with the enforcement and sanctioning of social workers, not licensed at the independent practice level who may continue to participate in the THSteps MCM program.

Mr. Marks 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 or administering the amendment will be to ensure the appropriate regulation of social workers, continue to identify competent practitioners to ensure public safety, health and welfare and to clarify settings in which licensed social workers can work. There will be no impact for small or micro businesses, as the proposed rule would not affect them. If the proposed rule passes there would be no negative economic impact on local employment or individuals who would be required to comply with the rule. However if the proposed rule is not adopted there may be economic impact on individuals who will not be eligible to contract with the THSteps MCM program resulting in potential unemployment of those individuals. Additionally, there may be economic impact on local employment due to increased absenteeism of program participants because of the reduced availability of social work services.

Comments on the proposed rule may be submitted to Andrew T. Marks, LMSW, Executive Director, Texas State Board of Social Worker Examiners, 1100 West 49th Street, Austin, Texas 78756-3183, telephone (800) 232-3162 or (512) 719-3521, (512) 834-6785 (fax). Comments will be accepted for 45 days following publication of this proposal in the *Texas Register*.

The amendment is proposed under the Texas Professional Social Work Act, Occupations Code §505.201(a)(1) which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Act and §505.307 relating to private independent practice recognition.

The amendment affects the Occupations Code, Chapter 505.

§781.301. Qualifications for Licensure.

(a) (No change.)

(b) Only a person who is licensed and recognized by the board as a LMSW-ACP or LMSW-AP is qualified for the private, independent practice of social work. No further recognition is necessary.

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

(5) All levels of licensed social workers (SWA, LSW, LMSW, LMSW-AP, or LMSW-ACP) may provide medical case management services as independent Medicaid providers for the THSteps Medical Case Management Program administered by the Texas Department of Health if allowed under that program's rules. Social workers licensed as SWAs, LSWs or LMSWs cannot participate in any other form of private independent practice.

(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 December 4, 2000.

TRD-200008430
Deborah Hammond, LMSW-ACP
Chair
Texas State Board of Social Worker Examiners
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 458-7236

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TITLE 25. HEALTH SERVICES

PART 16. TEXAS HEALTH CARE INFORMATION COUNCIL

CHAPTER 1301. HEALTH CARE INFORMATION

SUBCHAPTER E. TECHNICAL ADVISORY COMMITTEES

25 TAC §§1301.61 - 1301.69

(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 Health Care Information Council or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Health Care Information Council (Council) proposes the repeal of §§1301.61-1301.69, relating to the Council's technical advisory committees (TACs) as adopted and published in the April 21, 1999, issue of the *Texas Register* (24 TexReg 3091).

The Council proposes the repeal of §§1301.61-1301.69, in response to House Bill 1513, Acts 1999, 76th Legislature which, in part, amended Health and Safety Code § 108.003 (g) to exclude the Council's technical advisory committees from the application of Chapter 2110 of the Government Code.

Jim Loyd, Executive Director, has determined that for the first five-year period there will be no additional costs associated with repealing §§1301.61-1301.69.

Mr. Loyd has also determined that for the first five-year period there will be no anticipated costs to local government affected by as a result of repealing §§1301.61-1301.69.

Mr. Loyd also has determined that for each year of the first five-year period the anticipated public benefit will be a reduction in laws that need to be stored and published by the Secretary of State and the State Library. There will be no effect on small businesses. Mr. Loyd estimates that there will be no additional costs to providers as a result of repealing §§1301.61-1301.69.

Comments on the proposed repeal of §§1301.61-1301.69 may be submitted to Jim Loyd, Executive Director, Texas Health Care Information Council, Two Commodore Plaza, 206 East 9th Street, Suite 19.140, Austin, Texas 78701 no later than 30 calendar days from the date that this notice is published in the *Texas Register*.

The Council will entertain requests for a public hearing until the 25th day after the date the rules are published in the *Texas Register*.

The repeal of §§1301.61-1301.69 is proposed under the Health and Safety Code, §108.003 and §108.006. The Council interprets §108.003(g) as authorizing the Council to appoint technical advisory committees and those advisory committees shall include the technical advisory committees described in paragraphs one through five (1-5) of §108.003(g), Health and Safety Code and Government Code §2110 does not apply to these advisory committees. The Council interprets §108.006 as authorizing it to propose and adopt rules necessary to carry out Chapter 108, including proposing to repeal rules concerning the Council's advisory committees.

The Health and Safety Code, §108.003, is affected by the proposed repeal of these sections.

§1301.61. Definitions.

§1301.62. Technical Advisory Committees (TAC's).

§1301.63. Membership.

§1301.64. Officers.

§1301.65. Meetings.

§1301.66. Technical Advisory Committee (TAC) Subcommittees.

§1301.67. Reimbursement of Expenses.

§1301.68. Reports to the Council.

§1301.69. Evaluation of Technical Advisory Committee (TAC) Costs and Benefits.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008382
Jim Loyd
Executive Director
Texas Health Care Information Council
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 482-3312

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

28 TAC §§3.3306, 3.3308, 3.3312

The Texas Department of Insurance proposes amendments to §§3.3306, 3.3308, and 3.3312 concerning the minimum standards for Medicare supplement policies. This proposal is necessary to bring Texas into compliance with federal requirements adopted November 1999 in Public Law 106-113, Balanced Budget Refinement Act (BBRA) and Public Law 106-170, Ticket To Work And Work Incentives Improvement Act (TWWIIA). The BBRA and TWWIIA amended section 1882 of the Social Security Act (Act), which governs Medicare supplement insurance. The BBRA amended the guaranteed issue provisions and the TWWIIA amended the suspension of benefits and premiums under the Medicare supplement policy provisions of the Act. TDI rules must comply with the federal mandates or subject the state to potential penalties, including the loss of regulatory authority over Medicare supplement coverage. The proposal also makes technical changes to the sections and forms. The proposed amendment to §3.3306 provides that an individual eligible for benefits under the Act can suspend existing Medicare supplement benefits while the individual receives benefits under the Act and is covered under a group health plan, then reinstate the Medicare supplement coverage if the individual loses coverage under the group health plan and provides the required notice of loss of coverage. The proposal also sets forth a copayment structure for outpatient hospital services provided to Medicare beneficiaries. The proposed amendment to Figure §3.3308(c)(2)(D) changes the name of the "Medicare Handbook," adds prospective payment system language to the "outline of coverage" cover page for Plans A-J regarding Medicare Part B, adds brackets to the deductibles under Plan F or High Deductible Plan F and Plan J or High Deductible Plan J, and adds language to Plans H and I concerning "Basic Outpatient Prescription Drugs--Not Covered By Medicare." The proposed amendment to §3.3312 expands the guaranteed issue provision for "eligible persons" and sets forth an alternate date for termination of enrollment that an individual can use when enrolling in an alternative Medicare+Choice plan or a Medicare supplement plan. The department is also proposing to amend §21.2107, concerning mandatory notice requirements, which is published elsewhere in this issue of the *Texas Register*.

Ana M. Smith-Daley, Deputy Commissioner, Life/Health Division, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments. There will be no effect on local employment or the local economy.

Ms. Smith-Daley has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefits as a result of the proposed amendments will be increased benefits for an individual with Medicare supplement coverage, clarification of copayments, and greater protection for an individual covered under a Medicare+Choice plan if coverage is terminated. Any costs to persons required to comply with the proposed amendments is the result of the federal enactment of the BBRA and TWWIIA, and not as the result of this rule. It is the department's position that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses. Regardless of the fiscal effect, federal statutes mandate the amendments and considering the statutes' purposes, it is neither legal nor feasible to waive or modify the requirements of the amendments for small and micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 15, 2001 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted simultaneously to Diane Moellenberg, Chief Director, Regulatory Development, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amended sections are proposed under Insurance Code Article 3.74 and §36.001. Article 3.74, §10 provides that the department shall adopt rules in accordance with federal law applicable to the regulation of Medicare supplement insurance coverage that are necessary for the state to obtain or retain certification as a state with an approved regulatory program under 42 U.S.C. section 1395ss. Section 36.001 provides that the commissioner may adopt rules for the conduct and execution of the powers and duties of the department only as authorized by statute.

The following article is affected by this proposal: Insurance Code Article 3.74.

§3.3306. Minimum Benefit Standards.

No insurance policy, subscriber contract, certificate, or evidence of coverage may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless the policy, contract, certificate, or evidence of coverage meets the applicable standards in paragraphs (1)-(3) of this section. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) General standards. The following standards apply to Medicare supplement policies and are in addition to all other requirements of this subchapter, the Insurance Code, Article 3.74, and any other applicable law.

(A)-(F) (No change.)

(G) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed 24 months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance.

(i) (No change.)

(ii) Each Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended (for the period provided by federal regulation) at the request of the policyholder or certificate holder if the policyholder or certificate holder is entitled to benefits under section 226 (b) of the Social Security Act and is covered under a group health plan (as defined in section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy or certificate shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder or certificate holder provides notice of loss of coverage within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(iii) [~~(ii)~~] Reinstitution of such coverages shall provide for the following:

(I) waiver of any waiting period with respect to treatment of preexisting conditions;

(II) coverage which is substantially equivalent to coverage in effect before the date of such suspension; and

(III) classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) Standards for the basic (core) benefits common to all benefit plans. Every issuer shall make available a policy or certificate including only the basic "core" package of benefits described in subparagraphs (A)-(E) of this paragraph to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu of it. The basic core benefits shall consist of the following:

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

(E) coverage for the coinsurance amount (or in the case of hospital outpatient department services under a prospective payment system, the copayment amount) of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3)-(5) (No change.)

§3.3308. Required Disclosure Provisions

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

(c) Form for outline of coverage. In providing outlines of coverage to applicants pursuant to the requirements of subsection (b)(1) of this section, insurers shall use a form which complies with the requirements of this subsection. The outline of coverage must contain each of the following four parts in the following order: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in paragraphs (1) and (2) of this subsection in no less than 12-point type.

(1) (No change.)

(2) The items in subparagraphs (A)-(C) of this paragraph shall be included in the outline of coverage in addition to the items specified in the plan-specific outline-of-coverage forms.

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

(D) The outline of coverage for Medicare Select policies or certificates shall include information regarding grievance procedures which meet the requirements of §3.3325(m) of this title (relating to Medicare Select Policies, Certificates and Plans of Operation).
Figure: 28 TAC §3.3308(c)(2)(D)

(d) (No change.)

§3.3312. Guaranteed Issue for Eligible Persons.

(a) Guaranteed Issue.

(1) Eligible persons are those individuals described in subsection (b) of this section who, subject to subsection (d) of this section, apply to enroll under the policy not later than 63 days after the date of the termination of enrollment described in subsection (b), of this section and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement

policy described in subsection (c) of this section that is offered and is available for issuance to newly enrolled individuals by the issuer, and shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(b) Eligible Persons. An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan.

(2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under Part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under section 1894 of the Social Security Act, and there are circumstances similar to the following that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare+Choice plan:

(A) The certification of the organization or plan has been terminated, or the organization or plan has notified the individual of an impending termination of such certification [~~The organization's or plan's certification (under U.S.C. Title 42, Chapter 7, Subchapter XVIII, Part C) has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides~~]; or

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides, or has notified the individual of an impending termination or discontinuance of such plan;

(C) [~~(B)~~] The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the [~~federal~~] Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(D) [~~(C)~~] The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under U.S.C. Title 42, Chapter 7, Subchapter XVIII, Part D in relation to the individual, including the failure to provide an individual on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) [~~(D)~~] The individual meets such other exceptional conditions as the Secretary may provide.

(3)-(4) (No change.)

(5) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under section [~~Section~~] 1876 (Medicare risk or cost), any similar organization operating under demonstration project authority, any PACE program under section 1894 of the Social Security Act, an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and the subsequent enrollment is terminated by the individual during any period within the first 12 months of such subsequent enrollment (during which the individual is permitted to terminate such subsequent enrollment under section 1851(e) of the [~~federal~~] Social Security Act); or

(6) The individual, upon first becoming enrolled in Medicare part B for benefits at age 65 or older, enrolls in a Medicare+Choice plan under part C of Medicare, or in a PACE program under section 1894 of the Social Security Act, and disenrolls from the plan or program no later than 12 months after the effective date of enrollment.

(c) (No change.)

(d) Alternate Date for Termination of Enrollment. An individual described in subsection (b)(2) of this section may elect to apply subsection (a) of this section by substituting, for the date of termination of enrollment, the date on the letter which the individual was notified by the Medicare+Choice organization or PACE program of the impending termination or discontinuance of such plan or program it offers in the area in which the individual resides, but only if the individual disenrolls from the plan or program as a result of such notification. In the case of an individual making such an election, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subsection (a) of this section shall only become effective upon termination of enrollment under the plan or program involved.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008439
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-6327

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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 1. PLAN OF OPERATION

28 TAC §5.4007, §5.4008

The Texas Department of Insurance proposes amendments to §5.4007 and §5.4008, concerning building code specifications

in the plan of operation of the Texas Windstorm Insurance Association (Association or TWIA). The purpose of the Association is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. The Association's plan of operation specifies in §5.4008 the applicable building code standards to qualify for coverage from the Association for structures located in designated catastrophe areas which were constructed, repaired, or to which additions are made on and after September 1, 1998, the effective date of the Building Code for Windstorm Resistant Construction (code) and the Windstorm Resistant Construction Guide (guide) adopted by reference in §5.4007(b). The proposed amendments are necessary to make editorial and clarifying changes that make the rules, the code and the guide more user-friendly and easier to use.

Amendments are proposed to §5.4007 and §5.4008 to insert new effective dates for the amendments to the code and the guide and for clarification. The amendment to §5.4007(b) indicates that an amendment is proposed to the guide, and that the amendment will take effect on April 1, 2001. The amendments to §5.4008 are necessary to specify a new effective date, April 1, 2001, for the amendments to the code to take effect, and to change the reference from Windstorm Resistant Construction Code to Windstorm Resistant Construction Guide to clarify the document to be used.

The proposed amendments to the code and the guide are a result of recommendations by the Building Code Advisory Committee on Specifications and Maintenance to expand the available use of the code and the guide in the designated catastrophe areas. The advisory committee's recommended changes were submitted to the Commissioner on November 13, 2000, and those recommended changes were accepted by the Commissioner and are to be considered at a rulemaking hearing.

The proposed amendments to the guide are as follows:

A. Section 300, Prescriptive Requirements, Inland Construction Guidelines and Section 400, Prescriptive Requirements, Seaward Construction Guidelines.

1. 312 and 412 Framing. Permit the use of wood structural panels to resist uplift loads.

The proposed amendments to the code are as follows:

A. Section 200, Basic Definitions, Assumptions, and Limitations of the Prescriptive Code: Clarify the maximum limits for overhangs at gable endwalls.

B. Section 300, Prescriptive Requirements, Area Inland of Established Dividing Line and Section 400, Area Seaward of Established Dividing Line.

1. 301 and 401, Foundations. Typographical error regarding the maximum spacing for slab reinforcement was corrected.

2. 303 and 403, Wood Stud Wall Framing. The requirements for balloon and platform framing have been clarified which included figures that illustrate the construction of building corners when balloon framing is used. The corner stud pack arrangement detail was revised to reflect the use of a nailed holddown connector rather than bolted holddown connectors, which is more representative of the current construction practices along the Texas Gulf Coast. Guidance has been provided for the connection of multi-level top plates along exterior walls. A typographical error in the text for a reference in framing around garage doors was corrected. The uplift capacities for wood structural panels used for wall bracing and uplift were modified, and an additional table was included for uplift capacities when 10d fasteners are used. The blocking requirements for wood structural panels used for wall bracing and uplift were simplified by permitting the use of a single 2 by 4 block if the gypsum wallboard will not have a horizontal panel edge at the same location as a horizontal panel edge of the wood structural panels. The uplift capacities for wood structural panels used for uplift resistance were modified for the use of inch wood structural panels along with providing an option for use of inch wood structural panels. Two fastener options are provided in the tables for the uplift capacities for wood structural panels when used exclusively for uplift resistance. The blocking requirements for wood structural panels used for uplift resistance only were simplified by permitting the use of a single 2 by 4 block if the gypsum wallboard will not have a horizontal panel edge at the same location as a horizontal panel edge of the wood structural panels.

3. 306 and 406, Roof Framing. A new section is created to provide guidance for the construction of dormers. The existing section on construction of overhangs at gable endwalls is divided into three subsections to provide options for the construction of three types of gable endwall overhangs: (1) laddered soffits, (2) outlookers (laid on end), and (3) outlookers (laid flat). The new options also provide guidance on the attachment of the outlookers to the roof framing, and ten figures were included to illustrate the construction of the gable endwall overhangs. The attachment of roof sheathing along the perimeter of the roof has been clarified.

D. Appendices.

1. Texas Department of Insurance Standard TDI 1-98. A section is added to specify the information that should be reported following the tests specified in TDI 1-98. A clarification is included to indicate that guidance may be needed to determine the appropriate impact locations and cyclic loading requirements.

2. Figures. Illustrations are added to correspond to changes and clarifications for the code.

Copies of the proposed amendments to the TWIA Building Code for Windstorm Resistant Construction and the TDI Windstorm Resistant Construction Guide are available from the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The department will consider the adoption of amendments to §5.4007 and §5.4008 in a public hearing under Docket Number 2480, scheduled for 9:00, a.m. on January 4, 2001 , in Room 102 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Alexis Dick, Deputy Commissioner, inspections group, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Ms. Dick has also determined that there will be no adverse effect on local employment or the local economy.

Ms. Dick has also determined that for each year of the first five years that the proposed amendments are in effect, the public benefit anticipated as a result of adopting the amended sections will be the facilitation of compliance by coastal builders with the code and the guide by making changes that result in a code and guide which are more user-friendly and easier for builders and inspectors to use. There is no anticipated adverse economic effect on large, small or micro-businesses who are required to

comply with the proposed amendments because the amendments do not add any prescriptive requirements to the code or the guide that make the code more restrictive. Any small business or micro-business that is required to comply with the proposed amendments to §5.4007 and §5.4008 will incur no costs in addition to those costs that would be incurred under the section as currently adopted.

To be considered, written comments on the proposed amendments must be submitted no later than 5 p.m. on January 16, 2001 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be simultaneously submitted to Alexis Dick, Deputy Commissioner, Inspections Group, MC 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed pursuant to the Insurance Code Article 21.49 and §36.001. Article 21.49, §6A specifies building code requirements and approval or inspection procedures for windstorm and hail insurance through the Association. Article 21.49, §6C requires the Commissioner to appoint a Building Code Advisory Committee on Specifications and Maintenance to advise and make recommendations to the Commissioner on building specifications and maintenance in the Association's plan of operation for structures to be eligible for windstorm and hail insurance through the Association. Article 21.49, §5(c) provides that the Commissioner of Insurance by rule shall adopt the Association's plan of operation with the advice of the Association's board of directors. Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following statute is affected by this proposal: Insurance Code Article 21.49

§5.4007. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998.

(a) (No change.)

(b) Areas Inland of the Intracoastal Canal. To be eligible for catastrophe insurance, properties located inland of the Intracoastal Canal on the Texas coastline (or inland of the boundary authorized to be established by the Commissioner by the Insurance Code, Article 21.49 as amended) shall be subject to the building specifications and standards in the Standard Building Code, as amended May 8, 1973, and the Windstorm Resistant Construction Guide. The Department adopts by reference the Windstorm Resistant Construction Guide and any applicable amendments adopted by reference to be effective April 1, 2001, which has been developed by the Department to interpret and simplify the specifications and standards in the Standard Building Code, as amended May 8, 1973.

(c)-(d) (No change.)

§5.4008. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998.

(a) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on and after September 1, 1998, shall comply with the Building Code for Windstorm Resistant Construction. The Texas Department of Insurance adopts by reference the Building Code for Windstorm Resistant Construction, effective September 1, 1998. Amendments to the Building Code for Windstorm Resistant Construction are adopted by reference to be effective April 1, 2001 [~~December 1, 2000~~].

(b) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and east of the Specified Boundary Line and Certain Areas in Harris County.

(1) To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in paragraphs (2)(A) and (2)(B) of this subsection and constructed, repaired, or to which additions are made on and after September 1, 1998, shall comply with the Building Code for Windstorm Resistant Construction which is adopted by reference in subsection (a) of this section and any applicable amendments adopted by reference to be effective April 1, 2001 [~~December 1, 2000~~].

(2) (No change.)

(c) Areas Inland and West of the Specified Boundary Line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are west of the boundary line specified in subsection (b)(2)(A) of this section and constructed, repaired, or to which additions are made on and after September 1, 1998, and structures located inside the city limits of cities and town divided by the boundary line specified in subsection (b)(2)(A) of this section, and constructed, repaired, or to which additions are made on and after September 1, 1998, shall comply with the Standard Building Code, as amended May 8, 1973, and with the Windstorm Resistant Construction Guide [~~Code~~], which is adopted by reference in §5.4007(b) of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to which Additions are Made Prior to September 1, 1998). These areas include, but are not limited to, the areas inside the city limits of the cities of Harlingen, Raymondville, Kingsville, Robstown, Sinton, Refugio, Bay City, Friendswood, Alvin and Beaumont.

(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 December 4, 2000.

TRD-200008438
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-6327

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER M. MANDATORY BENEFIT NOTICE REQUIREMENT

28 TAC §21.2107

The Texas Department of Insurance proposes amending §21.2107 concerning mandatory benefit notice requirements. This proposal is necessary to bring Texas into compliance with federal requirements adopted November 1999 in Public Law 106-113, Balanced Budget Refinement Act (BBRA). The BBRA amended Section 1882 of the Social Security Act, which

governs Medicare+Choice coverage and Medicare supplement insurance. The proposed amendment to §21.2107 directs entities described in §3.3312, which concerns guaranteed issue of Medicare supplement policies for eligible persons, to disclose to covered individuals their rights under §3.3312(d), which provides an alternate date for termination of enrollment. The department is also proposing to amend §§3.3306, 3.3308, and 3.3312, which are published elsewhere in this issue of the *Texas Register*.

Ana M. Smith-Daley, Deputy Commissioner, Life/Health Division, has determined that for each year of the first five years 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 proposed amendment. There will be no effect on local employment or the local economy.

Ms. Smith-Daley has determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit as a result of the proposed amendment will be clarification that individuals who have received notice of termination of their Medicare+Choice coverage are to receive mandatory benefit notice of an alternate date for termination of enrollment to utilize when enrolling in an alternative Medicare+Choice or Medicare supplement plan. Any costs to persons required to comply with the proposed amendment is the result of the federal enactment of the BBRA and not as a result of this rule. It is the department's position that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses. Regardless of the fiscal effect, the amendment is due to changes in federal statutes, and considering the statutes' purposes, it is neither legal nor feasible to waive or modify the requirements of the amendment for small and micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 15, 2001 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted simultaneously to Diane Moellenberg, Chief Director, Regulatory Development, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amended section is proposed under Insurance Code Articles 3.74, 20A.22 and §36.001. Article 3.74, §10 provides that the department shall adopt rules in accordance with federal law applicable to the regulation of Medicare supplement insurance coverage that are necessary for the state to obtain or retain certification as a state with an approved regulatory program under 42 U.S.C. Section 1395ss. Article 20A.22(c) authorizes the commissioner to promulgate rules as are necessary and proper to meet the requirements of federal law and regulations. Section 36.001 provides that the commissioner may adopt rules for the conduct and execution of the powers and duties of the department only as authorized by statute.

The following articles are affected by this proposal: Insurance Code Articles 3.74 and 20A.22

§21.2107. Right To Medicare Supplement Coverage Notice.

(a) At the time of an event described in §3.3312(b) of this title (relating to Guaranteed Issue for Eligible Persons) because of which an individual loses coverage or benefits due to the termination of a contract, agreement, policy, or plan, the entity, as defined in and pursuant to §3.3312 of this title, shall notify the individual of his or her rights under §3.3312(a), (c), and (d) [~~§3.3312(a) and (c)~~] of this title, and of the obligations of issuers of Medicare supplement policies under §3.3312(a) of this title. The entity shall communicate such notice contemporaneously with the notification of termination.

(b) At the time of an event described in §3.3312(b) of this title because of which an individual ceases enrollment under a contract, agreement, policy, or plan, the entity, as defined in §3.3312 of this title that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the entity offering the plan, or the licensed third party administrator of the plan, respectively, shall notify the individual of his or her rights under §3.3312(a), (c), and (d) [~~§3.3312(a) and (c)~~] of this title, and of the obligations of issuers of Medicare supplement policies under §3.3312(a) of this title. The entity shall communicate such notice within ten working days of the entity's receipt of notification of disenrollment.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008440
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-6327

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 2. MEDICALLY NEEDY PROGRAM SUBCHAPTER A. PROGRAM REQUIREMENTS

40 TAC §2.1002

The Texas Department of Human Services (DHS) proposes an amendment to §2.1002, concerning application procedures in its Medically Needy Program chapter.

The purpose of the amendment is to allow telephone interviews or mail- in processing of Medicaid applications at periodic review. The proposed change is a result of an agency initiative in response to concerns raised by advocates regarding barriers to Medicaid participation.

Eric M. Bost, commissioner, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal implications for local governments as a result of enforcing the section.

The estimated additional cost to the state as of result of this amendment for the first five-year period is $4,100,000 for (FY) 2001, $13,400,000 for (FY) 2002, $18,100,000 for (FY) 2003, $20,900,000 for (FY) 2004, and $23,100,000 for (FY) 2005. The estimated additional cost result from an anticipated increase

in Medicaid caseloads that will impact the Texas Department of Health in the area of Medicaid premiums and other related costs. The estimated reduction in cost to the state as a result of the amendment is $100,000 for (FY) 2001, $200,000 for (FY) 2002, $300,000 for (FY) 2003, $300,000 for (FY) 2004, and $300,000 for (FY) 2005. The estimated reduction in cost is a savings to the state share of administrative costs. These estimates do not include cases for pregnant women because these cases close after the pregnancy ends. Based on this information, the net effect on state government for the first five-year period is $4,000,000 for (FY) 2001, $13,100,000 for (FY) 2002, $17,800,000 for (FY) 2003, $20,600,000 for (FY) 2004, and $22,800,000 for (FY) 2005.

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 amendment will be a healthier population because clients are less likely to lose Medicaid eligibility after six months due to missing an appointment and would maintain access to preventive medicine. There will be no effect on large, small, or micro businesses because no changes in practice are required of any business, large or small. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of this proposal may be directed to Melissa Saenz at (512) 438-4930 in DHS's Programs and Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-30, 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 amendment is proposed under the Human Resources Code, Title 2, Chapters 22, and 32, which authorize 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, §§31.001-31.0325, and §§32.001-32.042.

§2.1002. Application Procedures.

Applicants for the Medically Needy Program (MNP) follow the application procedures for Temporary Assistance for Needy Families (TANF) described in §3.301(a)(1) through §3.301(a)(3); §3.301 (a)(5); §3.301(b); §3.301(c) of this title (relating to Responsibilities of Clients and the Texas Department of Human Services (DHS)); §3.302 of this title (relating to Definitions Relating to the Application Process); §3.303(a) of this title (relating to Receipt of Application - Acceptability Factors); §3.304(a) of this title (relating to Application Interview); and §3.307(a) of this title (relating to Authorized Representative), with the following exceptions: [~~except that there~~]

(1) There are no conditions limiting the designation of an authorized representative for medically needy applicants and clients.

(2) Telephone interviews or mail-in processing of medically needy applications are allowed at periodic review.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008383
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 438-3108

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CHAPTER 4. MEDICAID PROGRAMS - CHILDREN AND PREGNANT WOMEN SUBCHAPTER A. ELIGIBILITY REQUIREMENTS

40 TAC §4.1002

The Texas Department of Human Services (DHS) proposes an amendment to §4.1002, concerning application procedures in its medicaid programs - Children and Pregnant Women Chapter.

The purpose of the amendment is to allow telephone interviews or mail- in processing of Medicaid applications at periodic review. The proposed change is a result of an agency initiative in response to concerns raised by advocates regarding barriers to Medicaid participation.

Eric M. Bost, commissioner, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal implications for local governments as a result of enforcing the section.

The estimated additional cost to the state as of result of this amendment for the first-year period is $4,100,000 for (FY) 2001, $13,400,000 for (FY) 2002, $18,100,000 for (FY) 2003, $20,900,000 for (FY) 2004, and $23,100,000 for (FY) 2005. The estimated additional cost result from an anticipated increase in Medicaid caseloads that will impact the Texas Department of Health in the area of Medicaid premiums and other related costs. The estimated reduction in cost to the state as a result of the amendment is $100,000 for (FY) 2001, $200,000 for (FY) 2002, $300,000 for (FY) 2003, $300,000 for (FY) 2004, and $300,000 for (FY) 2005. The estimated reduction in cost is a savings to the state share of administrative costs. These estimates do not include cases for pregnant women because these cases close after the pregnancy ends. Based on this information, the net effect on state government for the first five-year period is $4,000,000 for (FY) 2001, $13,100,000 for (FY) 2002, $17,800,000 for (FY) 2003, $20,600,000 for (FY) 2004, and $22,800,000 for (FY) 2005.

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 amendment will be a healthier population because clients are less likely to lose Medicaid eligibility after six months due to missing an appointment and would maintain access to preventive medicine. There will be no effect on large, small, or micro businesses because no changes in practice are required of any business, large or small. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of this proposal may be directed to Melissa Saenz at (512) 438-4930 in DHS's Programs and Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-30, 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 amendment is proposed under the Human Resources Code, Title 2, Chapters 22, and 32, which authorize 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, §§31.001-31.0325, and §§32.001-32.042.

§4.1002. Application Procedures.

Applicants for Medicaid programs follow the application procedures for Temporary Assistance for Needy Families (TANF) described in §3.301(a)(1) through 3.301(a)(3); §3.301(a)(5); §3.301(b); §3.301(c) of this title (relating to Responsibilities of Clients and the Texas Department of Human Services (DHS)); §3.302 of this title (relating to Definitions Relating to the Application Process); §3.303(a) of this title (relating to Receipt of Application - Acceptability Factors); §3.304(a) of this title (relating to Application Interview); and §3.307(a) of this title (relating to Authorized Representative), with the following exceptions:

(1) There are no conditions limiting the designation of an authorized representative for Medicaid applicants and clients.

(2) No application is required for children born to mothers who are eligible for and receiving Medicaid at the time of the children's birth.

(3) Applications for Medicaid from pregnant women will be processed in an expedited manner to ensure an applicant who is potentially eligible based on their self-declaration of information at the time of application has access to medical care within 30 days after application.

(4) Telephone interviews or mail-in processing of Medicaid applications are allowed at periodic review.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008384
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 438-3108

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PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.316

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §700.316, concerning eligibility requirements for Title IV-E, Medical Assistance Only (MAO), and state-paid foster care assistance, in its Child Protective Services chapter. The purpose of the amendment is to raise the resource limit that a child in foster care is allowed to have without losing eligibility for Title IV-E foster care assistance. The maximum resource limit is being raised from $1,000 to $10,000 for most children; and from $1,000 to $2,000 for children eligible for Supplemental Security Income (SSI). The $10,000 resource limit will also apply to children eligible for Medical Assistance Only (MAO) and state-paid foster care assistance. This increase will allow children leaving care to save more money for independent living purposes. The proposal also clarifies when the child's family's resources are considered when determining foster care eligibility.

Mary Fields, Budget and Federal Funds Director, 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.

Ms. Fields 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 foster children will be allowed to save more money to use for transitioning from foster care to independent living. There will be no effect on large, small, or micro-businesses because the amendment does not impose new requirements on any business. 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 Javier Zuniga at (512) 438-5029 in TDPRS's Child Protective Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services--159, Texas Department of Protective and Regulatory Services E-611, 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 amendment is proposed under the Human Resources Code (HRC), §40.029, which authorizes the Board to adopt rules to facilitate implementation of departmental programs.

The amendment implements Title IV-E of the Social Security Act.

§700.316. Eligibility Requirements for Title IV-E, MAO, and State-Paid Foster-Care Assistance.

The child must meet all of the following criteria to be eligible for Title IV-E, Medical Assistance Only (MAO), or state-paid foster care assistance.

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

(5) Resources.

(A) The child must not have equity in real or personal property in excess of: [~~$1,000.~~]

(i) $10,000 if the child does not receive Supplemental Security Income (SSI); or

(ii) $2,000 if the child receives SSI.

(B) The family, excluding the child, must not have equity in real or personal property in excess of $1,000. The family's resources are only considered at initial eligibility.

(6)-(8) (No change.)

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008374
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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40 TAC §700.317

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §700.317, concerning additional eligibility requirements for Title IV-E foster care, in its Child Protective Services (CPS) chapter. The purpose of the amendment is to comply with provisions of Title IV-E of the Social Security Act as amended by the Adoption and Safe Families Act (ASFA) and further clarified in the federal regulations issued January 25, 2000 (45 Code of Federal Regulations §1356.21). The proposal outlines judicial determinations or findings which are necessary for a child in foster care to be eligible for Title IV-E foster care assistance, and the timeframes in which these determinations must be made by the courts. An additional change is made to comply with federal requirements concerning citizenship.

Mary Fields, Budget and Federal Funds Director, 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.

Ms. Fields 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 to ensure that children in foster care are properly found eligible for Title IV-E foster care assistance. In this way, CPS can maximize the use of federal funding for those children who qualify to pay for the costs associated with their foster care. There will be no effect on large, small, or micro-businesses because the change does not impose any new requirements on any businesses. 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 Javier Zuniga at (512) 438-5029 in TDPRS's Child Protective Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services--156, Texas Department of Protective and Regulatory Services E-611, 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 amendment is proposed under the Human Resources Code (HRC), §40.029, which authorizes the Board to adopt rules to facilitate implementation of departmental programs.

The amendment implements Title IV-E of the Social Security Act and the relevant federal regulations.

§700.317. Additional Eligibility Requirements for Title IV-E Foster Care.

(a) Besides the general eligibility requirements specified in §700.316 of this title (relating to Eligibility Requirements for Title IV-E, MAO, and State-paid Foster Care Assistance), a child must meet the following additional requirements to qualify for Title IV-E foster care assistance.

(1) (No change.)

(2) Judicial determination.

(A) At the time a child is first removed from the home, regardless of whether it is an emergency removal subject to ex parte proceeding or removal pursuant to an adversary hearing with prior notice, the first court ruling that sanctions the removal must contain the judicial determination that continuation in the home would be contrary to the welfare of the child, or that placement would be in the best interest of the child [~~In a nonemergency removal, the court must determine that TDPRS made reasonable efforts to prevent removal and to reunify the family~~].

(B) A judicial determination regarding reasonable efforts must be made no later than 60 days following the court-ordered removal. That determination must specify either that: [~~In an emergency removal, the court must determine either:~~]

(i) the efforts that were made to prevent the child's removal from the home were reasonable under the circumstances, when considering the child's health and safety; or

(ii) reasonable efforts were not required because of aggravated circumstances, as defined in the Texas Family Code, §262.2015, or because a parent has previously had parental rights involuntarily terminated with respect to a sibling.

~~*[(i)* that TDPRS made reasonable efforts to prevent removal and to reunify the family; or]~~

~~*[(ii)* that it was reasonable to remove the child without making or extending efforts to prevent removal.]~~

(C) Additional judicial determinations must be made regarding permanency planning. At least once during every 12-month period that the child remains in foster care, beginning with the date of the court-ordered removal, there must be judicial determination that the state has made reasonable efforts to finalize the permanency plan

that is in effect. Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family. [~~In both emergency and nonemergency removals, the court's original order placing the child in TDPRS's conservatorship must include a statement that removal is in the child's best interest.~~]

(D) All required judicial determinations must be explicitly documented and must be made on a case-by-case basis as stated in the court order. It is not acceptable when a court order merely references state law in support of a required judicial determination.

(3)-(4) (No change.)

(5) Citizenship or alien status. The child must be a citizen of the United States or a qualified [~~an~~] alien, as described in 8 U.S.C. §1641(b) [~~lawfully admitted for permanent residence~~].

(b) (No change.)

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008366
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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CHAPTER 700. CHILD PROTECTIVE SERVICES

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of §§700.337-700.344 and 700.346-700.348; and proposes new §§700.801-700.805, 700.820-700.823, 700.840-700.850, 700.860-700.863, 700.880, and 700.881, concerning the adoption assistance program, in its Child Protective Services chapter. The new sections are proposed in new Subchapter H, Adoption Assistance Program. The purpose of the repeals and new sections is to simplify the language of the adoption assistance rules so they are clearer to the public and private child-placing agencies. The proposal is intended to facilitate understanding of the law, eligibility requirements and application procedures, and enable private child-placing agencies to better fulfill their obligation to inform adoptive parents of the assistance benefits which may be available if they adopt a special needs child. The proposal is part of TDPRS's strategic plan initiative to review and revise rules to eliminate redundancy and conflict; maximize uniformity across program lines; and promote efficiency, effectiveness and accountability. In drafting the new rules, staff used the question and answer style as well as other plain language techniques.

Mary Fields, Budget and Federal Funds Director, 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.

Ms. Fields 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 sections will be better organized and easier to understand. There will be no effect on large, small, or micro-businesses because there is no change to the program requirements. 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 Susan Klickman at (512) 438-3302 in TDPRS's Child Protective Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-157, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Under section 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.

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §§700.337-700.344, 700.346-700.348

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

The repeals are proposed under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The repeals implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.337. Eligibility Requirements for State-paid Adoption Subsidies.

§700.338. Additional Eligibility Requirements for Federal Title IV-E Adoption Assistance.

§700.339. Determination of Adoption Assistance Benefits.

§700.340. Effective Dates of Subsidy Benefits.

§700.341. Application and Right to Notification.

§700.342. Beginning the Subsidy.

§700.343. Reporting Changes.

§700.344. Right to Appeal.

§700.346. Reimbursement of Nonrecurring Adoption Expenses.

§700.347. Medical Assistance for Children Who Do Not Reside in the State That Signed the Adoption Assistance Agreement.

§700.348. Continuing Eligibility for Title IV-E Adoption Assistance in Subsequent Adoptions.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008367
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §§700.801-700.805

The new sections are proposed under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The new sections implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.801. What Do Terms in This Subchapter Mean?

In Subchapter H, the following words and terms have the stated meanings:

(1) The words "I," "my," "you" and "your" refer to the adoptive parent(s) of a special needs child.

(2) The words "we," "us," "our" and "PRS" refer to the Texas Department of Protective and Regulatory Services (PRS) or any of its divisions or employees, including Child Protective Services (CPS).

(3) The word "child" refers to any child that meets the definition of a special needs child, as described in §700.804 of this title (relating to Who is a special needs child?).

(4) The term "Title IV-E" refers to the federal program for adoption assistance that is established under Title IV-E of the Social Security Act, 42 U.S.C. §673, and administered by PRS.

(5) The term "state adoption assistance" refers to the state program for adoption assistance established under Texas Family Code, §162.302.

(6) The term "AFDC eligible" means meeting the requirements of eligibility for benefits from the Aid to Families with Dependent Children (AFDC) program, as in effect in Texas on July 16, 1996.

(7) The term "licensed child-placing agency" or "LCPA" refers to a private, nonprofit agency that is licensed or certified by the State of Texas to place children for adoption.

(8) The term "adoptive parent(s)" refers to the person(s) who commit to adopting a special needs child and who meet the federal requirements for criminal background checks, as described in Title IV-E of the Social Security Act, 42 U.S.C. §671(a)(20).

(9) The term "adoptive placement" refers to the period of time when PRS or the LCPA has managing conservatorship of the child, parental rights to the child are terminated, and the child is living with the adoptive parent(s) under a written adoptive placement agreement.

(10) The term "complete application" refers to the forms and documents that must be filled out and filed with PRS to request adoption assistance and establish eligibility. An application is not complete until we receive all the information and supporting documentation necessary to determine whether the child is eligible.

(11) The word "agreement" refers to the written agreement for adoption assistance which, when agreed upon and signed by the adoptive parent(s) and PRS, becomes legally binding on the parties.

(12) A "deferred agreement" is a binding agreement to provide adoption assistance at a future date. Deferred agreements are used when you are able to meet the child's current needs but may need assistance in the future.

§700.802. What Is Adoption Assistance?

(a) Adoption assistance is a program designed to encourage the adoption of children with special needs. The program includes benefits to help meet the needs of your adopted child.

(b) The benefits that may be provided under the program are:

(1) Texas Medicaid health coverage for the child;

(2) monthly payments to assist in meeting the child's needs; and

(3) reimbursement of one-time expenses directly related to completing the adoption process (nonrecurring expenses).

§700.803. Do All Children Placed for Adoption by PRS Get Adoption Assistance?

(a) No. Only a special needs child can qualify for adoption assistance. When we place a child for adoption, we first determine whether the child is eligible under Title IV-E. If the child is not eligible under Title IV-E, we determine whether the child is eligible under the state adoption assistance program.

(b) To receive any adoption assistance benefits, you must sign an agreement before the adoption is final. Exceptions can be made to this requirement only when there are extenuating circumstances, as described in §700.881 of this title (relating to What are extenuating circumstances?).

§700.804. Who Is a Special Needs Child?

(a) A special needs child is one who the state determines cannot or should not be returned to the home of his parents. For example, that determination is made in a court order terminating parental rights. In addition, a reasonable effort must be made to find an adoptive placement with no adoption assistance, unless doing so is against the child's best interests.

(b) A special needs child must be less than 18 years old and meet one of the following criteria at the time of adoptive placement:

(1) the child is at least six years old;

(2) the child is at least two years old and a member of a minority group that traditionally creates a barrier to adoption;

(3) the child is being adopted with a sibling or to join a sibling; or

(4) the child has a verifiable physical, mental, or emotional handicapping condition as diagnosed by an appropriately qualified professional.

§700.805. Can a Child Who Is Placed by an LCPA Get Adoption Assistance?

(a) Yes, but a special needs child placed for adoption by an LCPA can qualify for adoption assistance only by meeting the requirements of Title IV-E, as described in Division 2 of this subchapter (relating to Title IV-E Eligibility Requirements). A special needs child placed for adoption by an LCPA cannot qualify for the state adoption assistance program.

(b) In addition, you must sign an agreement before the adoption is final. Exceptions can be made to this requirement only when there are extenuating circumstances, as described in §700.881 of this title (relating to What are extenuating circumstances?).

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008368
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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DIVISION 2. TITLE IV-E ELIGIBILITY REQUIREMENTS

40 TAC §§700.820-700.823

The new sections are proposed under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The new sections implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.820. How Do I Get Title IV-E Adoption Assistance for My Child?

(a) To be eligible for any adoption assistance benefits, your child must be a special needs child in an adoptive placement and you must sign an agreement with us before completing the child's adoption. In addition, benefits are only available to those who meet the federal law requirements of U.S. citizenship or special immigration status, as described in §700.823 of this title (relating to What if the child is not a U.S. citizen?).

(b) When the additional Title IV-E eligibility requirements are met, as described in this division, you may be entitled to monthly payments and Texas Medicaid coverage for your child in addition to the reimbursement of nonrecurring expenses.

(c) When the additional Title IV-E eligibility requirements are not met, the only benefit you can receive is reimbursement of nonrecurring expenses, as described in §700.850 of this title (relating to How do I get reimbursement of nonrecurring expenses?).

§700.821. What Are the Additional Title IV-E Eligibility Requirements?

(a) The special needs child being adopted must meet one of the following conditions to be eligible for Medicaid and possible monthly payments under an agreement:

(1) The child qualifies for Supplemental Security Income (SSI) benefits, as determined by the Social Security Administration (SSA), at some point during the adoptive placement.

(2) We determine that the child was AFDC eligible both:

(A) at the time the court proceedings began that resulted in the child's removal from his home; and

(B) at the time the adoption petition was filed; or

(3) The child lives with a minor parent in foster care, and the child's costs are included in the Title IV-E foster care payments being made on behalf of the minor parent.

(b) To determine whether the child was AFDC eligible at the time of removal, we must consider the detailed circumstances of the home of the parent or relative from whom the court ordered the child to be removed. If the child was no longer living in the home of that parent or relative at the time of the court's order,

(1) the child must have previously lived there at some point during the six months before the court removal proceedings began; and

(2) we must determine that the child would have been AFDC eligible if the child had still been living in that home during the month the court proceedings began.

§700.822. What Is a Court Removal?

The first court order that addresses the fact that the child is no longer living in his home or authorizes removal from the home must contain a finding by the judge that to remain in the home would have been contrary to the child's welfare or not in the child's best interests. Even when custody of the child is voluntarily transferred to an LCPA, a court order with this finding is required and the proceedings that result in that order must begin within six months after the child is no longer living in that home.

§700.823. What if the Child Is Not a U.S. Citizen?

(a) If the child is not a U.S. citizen, then the child must meet one of the conditions specified in this subsection or in subsection (b) of this section before the agreement is signed:

(1) The child has been a permanent resident or other qualified alien (as described in 8 U.S.C. §1641(b)) for at least five years;

(2) The child entered the U.S. as a permanent resident or other qualified alien before August 22, 1996; or

(3) The child is a refugee or asylee (as defined in 8 U.S.C. §1613(b)).

(b) If the child does not meet one of the conditions listed in subsection (a) of this section, but has been a permanent resident or other qualified alien for less than five years, then the child is still eligible for adoption assistance if you are a U.S. citizen, permanent resident, or other qualified alien.

(c) A child who does not meet the conditions in subsections (a) or (b) of this section, including an undocumented child, is not eligible for Title IV-E adoption assistance.

(d) The child's citizenship or immigration status must be verified in accordance with federal law. If you are relying on the exception in subsection (b) of this section, your citizenship or immigration status must be verified in accordance with federal law.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008369
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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DIVISION 3. APPLICATION PROCESS, AGREEMENTS, AND BENEFITS

40 TAC §§700.840-700.850

The new sections are proposed under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The new sections implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.840. What Is the Application Process for Adoption Assistance?

(a) You can always get information about how to apply for adoption assistance from us. However, it is the responsibility of the LCPA that places your child to inform you of the program and to collect and document all information necessary to establish the child's eligibility.

(b) You must file a complete application with the PRS adoption assistance staff in your area. The LCPA can disclose information and supporting documentation directly to us on your behalf.

(c) Some of the information you provide in the application is not used to determine whether your child is eligible for benefits. For example, information about your family income and resources is only used to discuss and negotiate the amount of monthly payments, as described in §700.844 of this title (relating to What is the maximum amount for monthly payments?).

§700.841. When Do I Find Out if My Child Is Eligible?

Within 30 days after we receive your complete application, we send you written notification of our decision. If you do not receive the notification or you believe your application is not being processed promptly, you should contact the supervisor of the adoption assistance staff in the PRS office where you filed the application. That is the only way you can appeal a delay in processing your application.

§700.842. What Happens if My Child Is Determined Eligible?

(a) If we determine the child is eligible for adoption assistance, we send you a proposed agreement that identifies the benefits available to you. You do not receive any benefits until we receive the agreement with your signature agreeing to all the terms and conditions.

(b) When the child is eligible for benefits in addition to the reimbursement of nonrecurring expenses and you are not offered the maximum monthly payment amount, you can discuss and negotiate the amount with us before you sign and return the proposed agreement.

(c) If you do not have an immediate need for adoption assistance, but anticipate having a need in the future, you can sign an agreement for deferred adoption assistance.

(d) Whenever the child is eligible for reimbursement of nonrecurring expenses, you can receive that benefit only after the adoption is finalized, as described in §700.850 of this title (relating to How do I get reimbursement of nonrecurring expenses?)

§700.843. What Happens if My Child Is Determined Ineligible?

If we determine that the child is not eligible for adoption assistance or is not eligible for all benefits, we explain the reasons in the written notification and inform you of your right to appeal our decision.

§700.844. What Is the Maximum Amount for Monthly Payments?

(a) The monthly payment amount cannot exceed the level-of-care one (LOC 1) rate that is being paid by us for foster care maintenance as of the effective date of your agreement:

(1) The ceiling for the monthly payment amount is determined as follows:

(A) the daily LOC 1 rate is multiplied by 365 days;

(B) the result is divided by 12 months; and

(C) that result is rounded to the nearest whole dollar amount.

(2) This ceiling for monthly payments applies to all agreements and is not subject to negotiation or appeal. Exception: For agreements already in existence where the monthly payment exceeds the LOC 1 foster care rate, the ceiling will be the amount being paid by us on the date this section is adopted.

(b) The following factors are considered and discussed in negotiating and determining benefits:

(1) We evaluate your child's current need for services in relation to your family's income, expenses, circumstances, and plans for the future;

(2) Benefits are intended only to assist in meeting your child's current needs and your parental responsibilities;

(3) Any and all sources of income and support that are specifically designated for the child (such as Retirement, Survivors, Disability Insurance (RSDI) or Veterans Administration (VA) benefits) must be applied toward meeting the child's needs;

(4) When the child needs special services not covered by your private insurance or Texas Medicaid, we must determine the actual cost of services available to meet those needs. If actual costs are not available, we determine a reasonable estimate of projected costs; and

(5) We do not consider costs associated with your choice to meet the child's needs through private sources when those needs can be met through other publicly funded sources.

§700.845. Can My Child Get Monthly Payments and Supplemental Security Income (SSI) Benefits after Adoption?

Your financial resources are considered by the Social Security Administration (SSA) when determining if your child can still receive SSI benefits after the adoption. If your child does remain eligible to receive SSI benefits, any monthly payment amount you receive under an agreement with us is deducted by the SSA from the child's SSI benefit amount. If you decide not to sign an agreement with us before the adoption is final because you prefer to receive the SSI benefits, you cannot later return and ask for adoption assistance monthly payments if the SSI benefits stop.

§700.846. When Do I Start Receiving Benefits?

(a) Benefits begin on the effective date of the agreement.

(b) For children not currently receiving foster care, the effective date of the agreement is the first day of the month in which we receive your complete application and all the eligibility requirements are met.

(c) For children in our conservatorship who are receiving foster care payments, the effective date of the agreement is the first day of the next month after we receive the complete application and all eligibility requirements are met. Foster care payments cease when adoption assistance benefits begin.

§700.847. How Long Does My Child Receive Benefits?

The agreement you sign is effective through the last day of the month in which your child turns 18 years old.

§700.848. Can Benefits Be Terminated before My Child Turns 18 Years Old?

Yes. Benefits can be terminated before your child turns 18 when any of the following occurs:

(1) the adoptive placement ends and the child is removed from your home before the adoption is consummated;

(2) you agree to an earlier ending date;

(3) the child is legally emancipated;

(4) you are not legally responsible for the child because your parental rights are terminated; or

(5) the child dies.

§700.849. Can Benefits Be Suspended during the Term of the Agreement?

(a) You can always request that we stop your benefits, including monthly payments.

(b) We may suspend benefits without your agreement when any of the following occurs:

(1) We determine that the child is no longer living in your home and you are not providing financial support for the child. Monthly payments can resume once your financial support of the child continues. We will not reimburse you for the period of time when you were not supporting the child financially.

(2) We do not receive a certified copy of the Decree of Adoption within 24 months after the effective date of the agreement.

(3) We do not receive your recertification form, as described in §700.862 of this title (relating to Why must I recertify my child's eligibility?).

(c) If you receive any monthly payments for a period of time when you or your child is not eligible, we can require you to repay the total amount or recover the overpayment by deducting amounts from future payments under a repayment plan.

§700.850. How Do I Get Reimbursement of Nonrecurring Expenses?

(a) After you finalize the adoption, you can get reimbursement from us for your nonrecurring expenses. These expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees, and "other expenses" that are directly related to the legal adoption of your child.

(b) Other expenses are defined as the costs of adoption incurred by you or by someone else that you must reimburse. Examples of these expenses include the adoption home study, health and psychological examinations, supervision of the adoptive placement, transportation and reasonable costs of lodging and food for you or your child when necessary to complete the adoption process.

(c) You must have a signed agreement and we must receive your claim for reimbursement no later than 18 months after the Decree of Adoption is signed by the court. Along with your receipts or other proof of payment (such as cancelled checks), you must submit a certified copy of the Decree of Adoption. Only expenses actually incurred that are not reimbursable by a third party are considered for reimbursement.

(d) The maximum amount that you can receive as reimbursement for nonrecurring expenses is $1500 per child.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008370
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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DIVISION 4. CHANGES IN CIRCUMSTANCES

40 TAC §§700.860-700.863

The new sections are proposed under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The new sections implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.860. What if My Child's or Family's Circumstances Change?

(a) You must promptly inform us of the following changes in circumstances regarding your adopted child or your family:

(1) any name or address changes;

(2) a change in your marital status;

(3) an increase or decrease in the child's income;

(4) a change in where the child is living;

(5) a change in the child's legal status; and

(6) any change(s) that may affect continuing eligibility for benefits.

(b) If you are not already receiving the maximum monthly payment, you may request an increase when there is a change of circumstances affecting your adopted child's current needs or your family's ability to meet those needs. Any request for an increase in monthly payment amount is subject to the requirements and limitations described in §700.844 of this title (relating to What is the maximum amount for monthly payments?). To request an increase, you must submit a written request to the local PRS office that processed your application.

§700.861. Will My Child Receive Benefits if I Move to or Live in Another State?

(a) When you have an agreement with us that provides Texas Medicaid coverage for your child and you live in or move to another state, we continue to provide Texas Medicaid only if the other state does not agree to cover your child under its state Medicaid program. We continue to provide any monthly payments specified in your agreement if you notify us of your new address.

(b) When you move to Texas from another state with which you have an adoption assistance agreement that provides Medicaid coverage for your child, we provide Texas Medicaid while your child is living in Texas. Only medical assistance benefits covered by the Texas Medicaid program are provided. The state that entered into the agreement with you remains responsible to provide any monetary payments or other services specified in that agreement.

§700.862. Why Must I Recertify My Child's Eligibility?

We may periodically send you a recertification form to ensure that you remain eligible for the benefits provided by the agreement. You must completely fill out the form, and sign and return it to us within 60 days after you receive it. We may suspend your monthly payments if we do not receive your recertification form on time.

§700.863. Does a Child Remain Eligible for Benefits in a Subsequent Adoption?

(a) A child can remain eligible for adoption assistance in a subsequent adoption if the following conditions are met:

(1) we receive verification of the death of the previous adoptive parent(s) or termination of their parental rights; and

(2) a new adoption assistance agreement is signed before consummation of the subsequent adoption.

(b) If a certified copy of the new Decree of Adoption is not provided to us within 24 months after the agreement is signed, we may suspend benefits until the Decree is received.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008371

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: January 26, 2001

For further information, please call: (512) 438-3437

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DIVISION 5. APPEALS AND FAIR HEARINGS

40 TAC §700.880, §700.881

The new sections are proposed under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The new sections implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.880. Can I Appeal the Decision Regarding Adoption Assistance Benefits?

(a) Yes. You may appeal the decision by sending us a written request for a fair hearing within 90 days after you receive written notification of our decision. A fair hearing provides you the opportunity to appeal a decision made in a local PRS office to a higher authority within PRS.

(b) A fair hearing is available only when adoption assistance benefits are denied, suspended, reduced, or terminated.

(c) No fair hearing is available to appeal our decision when we offer to provide all benefits available, including the maximum monthly payment allowed, as described in §700.844 of this title (relating to What is the maximum amount for monthly payments?).

(d) When you apply for adoption assistance and when we notify you of our decision, you are told about your right to appeal, including the following:

(1) we inform you of the types of decisions you may appeal;

(2) we tell you how to request a fair hearing; and

(3) we let you know that another person, including an attorney, can represent you at the hearing.

§700.881. What Are Extenuating Circumstances?

(a) If you do not have a signed agreement that is effective before the adoption is final, benefits must be denied; however if there are extenuating circumstances, you can request a fair hearing after we deny your application.

(b) To prove extenuating circumstances exist, you must show that any of the following occurred:

(1) you were not informed of the adoption assistance program before the adoption was final;

(2) facts relating to the child's eligibility for adoption assistance were known but not disclosed to you before the adoption;

(3) the child's physical, mental, or emotional handicapping condition could not be diagnosed before the adoption, but is later diagnosed by a medical professional as having existed at the time of the adoptive placement;

(4) your application for adoption assistance was denied solely because of your family's financial means; or

(5) we made an error in determining that your child was not eligible before the adoption was final.

(c) You must establish in the fair hearing the existence of the extenuating circumstance(s). You must also prove that your child would have been eligible for adoption assistance if you had applied before the adoption consummation. When we agree that extenuating circumstances exist and your child is eligible, we may enter an agreed order without having a hearing. The hearing officer must approve the agreed order. If the hearing officer orders us to provide you with adoption assistance benefits, you must first sign an agreement consistent with the hearing officer's order.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008372

C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER O. FOSTER AND ADOPTIVE HOME DEVELOPMENT

40 TAC §700.1501, §700.1502

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §700.1501 and §700.1502, concerning decision on foster home applications and foster and adoptive home inquiry and screening, in its Child Protective Services (CPS) chapter. The purpose of the amendments is to delete the assessment of the applicant's ability to help a child develop a sense of identity consistent with the child's racial, cultural, and ethnic background, because it is in conflict with the Multi-Ethnic Placement Act of 1994 (MEPA), as amended (42 USC 622), and the Removal of Barriers to Interethnic Adoption Provisions of 1996 (IEP) (§1808, P.L. 104-088). This federal legislation prohibits TDPRS from assessing an applicant's ability to meet the cultural needs of a child, unless the evaluation is based on the needs of a specific child. The amendment to §700.1501 also adds a provision that allows the director of CPS to review and grant variances to state minimum standards for relative foster homes. The ability to grant variances on a case-by-case basis is needed to comply with the Adoption and Safe Families Act of 1997.

Mary Fields, Budget and Federal Funds Director, 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.

Ms. Fields 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 TDPRS will be in compliance with federal law. There will be no effect on large, small, or micro-businesses because a screening requirement is being eliminated, and businesses will not need to purchase equipment or increase staff to comply with the change. 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 Norton Teutsch at (512) 438-2939 in TDPRS's Child Protective Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services--155, Texas Department of Protective and Regulatory Services E-611, 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 amendments are proposed under the Human Resources Code (HRC), Title 2, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendments implement the Human Resources Code, Chapter 40, the Texas Family Code, Chapters 261 and 264, the Multi-Ethnic Placement Act of 1994 (MEPA), as amended (42 USC 622) and the Removal of Barriers to Interethnic Adoption Provisions of 1996 (IEP) (§1808, P.L. 104-088).

§700.1501. Decision on Foster Home Applications.

(a) To be accepted as a foster home, the home must meet the department's minimum standards, and the Texas Department of Protective and Regulatory Services (TDPRS) must have determined, through the foster-home screening and study, that the parents can provide adequate care for foster children in the department's managing conservatorship and that they will follow the department's policies for discipline of these children as specified in §700.1502(2)(K) [~~§700.1502(2)(L)~~] of this title (relating to Foster and Adoptive Home Inquiry and Screening).

(b) Relative homes verified to provide foster care services to related children must meet the same requirements as non-relative foster homes. The Director of Child Protective Services, or his designee, will consider requests for variances to minimum standards for relative foster homes on a case-by-case basis. The Director of Child Protective Services, or his designee, shall use the criteria followed by TDPRS's Child Care Licensing Division when reviewing and approving non-relative foster home variance requests.

§700.1502. Foster and Adoptive Home Inquiry and Screening.

The Texas Department of Protective and Regulatory Services' (TDPRS') policies for responding to inquiries and screening and approval of foster and adoptive homes are as follows:

(1) (No change.)

(2) Screening and approval of foster and adoptive homes.

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

~~[(H) Family's ability to help the child. Applicants are evaluated based on their ability to:]~~

~~*[(i)* help the child:]~~

~~*[(I)* develop a sense of identity consistent with the child's racial, cultural, and ethnic background; and]~~

~~*[(II)* learn to cope with difficulties that may arise from racial, cultural, or ethnic differences, both within and outside the adoptive family; and]~~

~~*[(ii)* develop a plan for helping the child manage the issues described above as the child reaches developmental milestones.]~~

(H) [~~(I)~~] Finances. Although there are no specific income requirements, the applicants must have enough income, and be able to manage it well enough, to meet the child's basic material needs. Income is also evaluated in terms of past and present management.

(I) [~~(J)~~] Health. The applicants' physical and mental health must be sufficient to assume parenting responsibilities. Physical and mental conditions are considered to protect the child against another loss of parenting through death, incapacity, or repetition of abuse or neglect.

(J) [~~(K)~~] Religion. There are no specific religious requirements. Applicants are evaluated based on:

(i) Their willingness to respect and encourage a child's religious affiliation.

(ii) Their willingness to provide a child opportunity for religious, spiritual, and ethical development.

(iii) The health protection they plan to give a child if their religious beliefs prohibit certain medical treatment.

(K) [~~(L)~~] Discipline. Physical discipline may not be used on a child in any TDPRS foster or adoptive home prior to consummation. TDPRS evaluates applicants based on their willingness and ability to:

(i) recognize and respect differences in children, especially children who have been abused or neglected;

(ii) employ methods of discipline that suit the particular needs and circumstances of each child; and

(iii) employ methods of discipline that conform to the policies specified in §700.1340(c) of this title (relating to Special Issues).

(L) [~~(M)~~] Criminal history. Criminal history background checks must be completed on all prospective foster and adoptive parents and the members of their households who are 14 years of age or older and not in the legal conservatorship of TDPRS. Criminal history background checks will be conducted in accordance with the criminal history rules promulgated by the Child Care Licensing Division of TDPRS.

(M) [~~(N)~~] Adoptive home studies - fertility. Fertility assessments are required only if TDPRS believes the couple needs to know more about their fertility before they adopt a child. The couple's fertility is important only in relation to resolution of their feelings about their infertility and their ability to accept and parent a child not born to them.

(N) [~~(O)~~] Citizenship and immigration. Only U.S. citizens, permanent residents, or other qualified aliens (as defined in 8 U.S.C. §1641(b)) can be approved as foster or adoptive parents. If an applicant who seeks to adopt a child does not have the required immigration status, the Director of Child Protective Services can grant a waiver if it is in the best interest of the child to do so. Relevant factors in assessing whether to grant a waiver include any family relationship or other significant prior relationship between the child and the applicant, and the applicant's ability to meet the child's particular needs.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008365

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: January 26, 2001

For further information, please call: (512) 438-3437

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CHAPTER 702. GENERAL ADMINISTRATION

The Texas Department of Protective and Regulatory Services (TDPRS) proposes new Chapter 702, General Administration, consisting of §§702.1, 702.5, 702.201, 702.205, 702.209, 702.213, 702.217, and 702.221. The purpose of the new chapter is to provide information that pertains to the general administration of TDPRS, or which pertains to more than a single program area. This proposal includes new Subchapter A, Introduction, which includes terms applicable to the entire chapter, and new Subchapter C, Agency Records and Information, which includes information required by the Texas Public Information Act. The new sections are written in question and answer format, and use other plain language techniques.

Mary Fields, Budget and Federal Funds Director, 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.

Ms. Fields 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 be clearer and easier to understand. There will be no effect on large, small, or micro-businesses because the sections do not impose any new restrictions or requirements on persons outside of TDPRS. 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 Phoebe Knauer at (512) 438-5916 in TDPRS's Legal Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-138, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Under section 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.

SUBCHAPTER A. INTRODUCTION

40 TAC §702.1, §702.5

The new sections are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The new sections implement the Human Resources Code, §40.029.

§702.1. What Is the Purpose of This Chapter?

The purpose of this chapter is to provide rules that guide the general administration of the Texas Department of Protective and Regulatory Services or that pertain to more than one program area with the department.

§702.5. How Are the Terms in This Chapter Defined?

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

(1) APS - Adult Protective Services, a division of the Texas Department of Protective and Regulatory Services (PRS) responsible for providing protective services for elderly and disabled persons.

(2) Board - The board of the Texas Department of Protective and Regulatory Services.

(3) CCL - Child-Care Licensing, a division of PRS responsible for the regulation of child-care facilities, as provided in Chapter 42 of the Human Resources Code.

(4) CPS - Child Protective Services, a division of PRS responsible for providing protective services to children and for providing family support and family preservation services.

(5) Department - The Texas Department of Protective and Regulatory Services.

(6) Executive director - The director of PRS.

(7) PEI - Prevention and Early Intervention, a division of PRS responsible for implementing and managing programs intended to provide early intervention or prevent at-risk behaviors that lead to child abuse, delinquency, running away, truancy, and dropping out of school.

(8) PRS - Texas Department of Protective and Regulatory 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.

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008349
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER C. AGENCY RECORDS AND INFORMATION

40 TAC §§702.201, 702.205, 702.209, 702.213, 702.217, 702.221

The new sections are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The new sections implement the Human Resources Code, §40.029.

§702.201. What Types of Records Are Maintained by PRS?

(a) PRS maintains records relating to our general administrative functions, including personnel records, financial records, policy and procedure manuals, and agency performance measurements. These records are generally available to the public and may be requested under the Texas Government Code, Chapter 552, the Texas Public Information Act.

(b) PRS also maintains confidential records relating to the clients served by our programs. These records are generally not available to the public, although they may be available to individual clients, government agencies, and others, as provided by state and federal laws and PRS rules. Additional rules concerning confidential client records may be found in the chapters of this part specifically relating to the Child Protective Services, Adult Protective Services, and the Child-Care Licensing programs.

(c) A complete listing of the types of records maintained by PRS may be found in the PRS Records Retention Schedule, available on the PRS public web site.

§702.205. Does PRS Make Information Available on the Public Internet?

Yes. PRS publishes a wide variety of information on our public web site, including the following:

(1) a description of agency programs and telephone numbers for reporting suspected abuse or neglect of children, the elderly, or the disabled;

(2) information on becoming a foster or adoptive parent;

(3) information on children available for adoption;

(4) listings of child-care facilities by local area;

(5) copies of agency business plans, annual reports, and performance measurement statistics;

(6) dates and agendas for upcoming PRS Board meetings and information on agency rules;

(7) information on doing business with PRS; and

(8) a listing of current job openings within PRS.

§702.209. What Is the PRS Public Web Site Address?

The PRS public web site address is: http//www.tdprs.state.tx.us.

§702.213. How Can a Member of the Public Obtain Information or Copies of Records That Are Not on the PRS Web Site?

Requests for copies of records must generally be submitted in writing, along with proof of identification, unless the request is for a copy of a PRS brochure or publication specifically designed for public distribution. To ensure that all necessary information is included with your request, you may be asked to complete a PRS Information Request Form. A copy of this form may be downloaded from the PRS public web site or requested from any PRS office.

§702.217. Where Should the Information Request Form Be Submitted?

(a) For the quickest response, submit your request for client records to the PRS regional attorney's office in the region where the records are physically located. In general, copies of client investigation records are stored in the region where the investigation took place. A complete listing of regional attorney offices by geographical location is available on the PRS public web site.

(b) Requests for copies of public records, such as financial and personnel records, should be submitted to: TDPRS, Office of General Counsel, E-611, P.O. Box 149030, Austin, TX, 78714- 9030.

§702.221. Is There a Charge for Copies of PRS Records?

Yes. PRS charges a fee to cover the costs of providing copies of its records, other than PRS brochures and publications specifically designed for public distribution at no cost. Fees are calculated according to the rules adopted by the General Services Commission, located in 1 TAC Chapter 111, Subchapter C (relating to Cost of Copies of Public Information). We may, at our discretion, waive charges if we determine that waiver is in the public interest or if we determine that the cost of collecting a fee exceeds the cost of providing the records.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008350
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER E. MEMORANDUM OF UNDERSTANDING WITH OTHER STATE AGENCIES

40 TAC §§702.401, 702.405, 702.409, 702.413

The Texas Department of Protective and Regulatory Services (TDPRS) proposes new §§702.401, 702.405, 702.409, and 702.413, concerning assisted living facilities, coordinated services for children and youths, memorandum of understanding (MOU) regarding service delivery to dysfunctional families, and memorandum of understanding concerning the Communities In Schools (CIS) program, in its General Administration chapter. The purpose of the proposal is to move the MOUs to new Chapter 702, General Administration. Previously, §§702.401, 702.405, and 702.409 were in Chapter 736, Memorandum of Understanding with Other State Agencies. Chapter 736 is being repealed in this issue of the *Texas Register,* and §§702.401, 702.405, and 702.409 are being proposed in this chapter without change. The purpose of the new §§702.413 is to adopt by reference Texas Education Agency's (TEA's) rule concerning the Communities In Schools program that contains the MOU between TEA and TDPRS.

Mary Fields, Budget and Federal Funds Director, 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.

Ms. Fields 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 be in compliance with the law. The public benefit of §702.413 will be ensured services for students at-risk of dropping out of school and enhanced effectiveness of the Communities In Schools program. There will be no effect on large, small, or micro-businesses because the sections do not impose new requirements on businesses. 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 Phoebe Knauer at (512) 438-5916 in TDPRS's Legal Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-137, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Under section 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 new sections are proposed under the Human Resources Code, §40.029, which authorizes the department to adopt rules to facilitate the implementation of departmental programs, and the Texas Family Code, §264.755, which requires the department to adopt by rule an MOU between TEA and PRS related to the CIS program.

The new sections implement the Human Resources Code, §40.029, and the Texas Family Code, §264.755.

§702.401. Assisted Living Facilities.

(a) Basis. The Texas Department of Human Services, hereinafter referred to as DHS, the Texas Office of the Attorney General, hereinafter referred to as OAG, and the Texas Department of Protective and Regulatory Services, hereinafter referred to as TDPRS are required under the provisions of Health and Safety Code §§247.046 and 247.062 to enter into a memorandum of understanding (MOU) regarding their respective responsibilities, procedures, enforcement needs, and plans for correcting violations or deficiencies in assisted living facilities. This MOU implements those requirements.

(b) DHS responsibilities.

(1) DHS accepts applications and issues licenses in accordance with the requirements of Chapter 247, and DHS rules and standards adopted to implement the law.

(2) If DHS finds a licensed assisted living facility operating in violation of minimum standards or licensing requirements and the violation creates an immediate threat to the health and safety of a resident in the facility, DHS may suspend the license or order the immediate closing of all or part of the facility. DHS shall retain primary responsibility for assisting families in finding new placements for individuals displaced when facilities licensed by or subject to licensure by DHS are closed. DHS will inquire whether a resident is receiving services from a mental health authority (MHA) and will contact the MHA accordingly to ensure continuation of service and placement assistance.

(3) DHS shall investigate each allegation of abuse, exploitation, or neglect of a resident of a assisted living facility in accordance with Chapter 247 of the Health and Safety Code, Chapter 48 of the Human Resources Code, and DHS rules. If the investigation reveals abuse, exploitation, or neglect, DHS shall implement enforcement measures, including closing the facility, revoking the facility's license, relocating residents, and making referrals to law enforcement agencies (including the OAG) as appropriate.

(4) DHS may refer a facility to the OAG or a local prosecuting attorney for the purpose of petitioning a district court for a temporary restraining order to restrain a continuing violation of standards or licensing requirements for assisted living facilities. If DHS finds that the violation creates an immediate threat to the health and safety of the assisted living facility residents, the referral is made to the OAG along with all affidavits necessary to prosecute the case. If the violation does not create an immediate threat to the health and safety of assisted living facility residents, the referral is to a local prosecuting attorney. DHS, through the OAG or a local prosecuting attorney, may petition a district court for a restraining order to inspect a facility that is operating without a license when admission to the facility cannot be obtained. In these inspection situations, DHS shall first contact the local prosecuting attorney for assistance.

(5) DHS shall cooperate with the OAG and/or the local prosecuting attorney in the preparation and prosecution of injunctive actions against assisted living facilities against which DHS has requested legal proceedings.

(6) DHS may refer persons who do not possess a license, or assisted living facilities that violate the Personal Care Facility Licensing Act (Chapter 247 of the Health and Safety Code) or a rule adopted

under that act, whose violation threatens the health and safety of a resident of a assisted living facility, to the OAG for the purpose of petitioning a district court for civil penalties under §247.045 of the Health and Safety Code. DHS will refer civil penalty cases to the local district attorney, county attorney, or city attorney if the OAG does not take action within 30 days of the referral. DHS shall cooperate with the OAG and the local prosecuting attorneys in the preparation for and prosecution of civil penalty actions.

(c) TDPRS responsibilities. TDPRS will assist DHS, upon request, in finding suitable placement for incapacitated individuals who have no family willing to assist and who must be relocated due to the closing of a assisted living facility licensed or subject to licensure by DHS.

(d) OAG responsibilities.

(1) The OAG will work in close cooperation with DHS throughout any legal proceeding requested by DHS under Chapter 247 of the Health and Safety Code.

(2) The OAG will keep DHS informed of the status of all cases referred to the OAG under Chapter 247 of the Health and Safety Code upon the request of DHS.

(3) The OAG will represent DHS to the full extent of the law in Chapter 247 actions.

(4) When the OAG chooses not to prosecute a Chapter 247 case referred by DHS, it will immediately inform DHS so that alternative action can be taken.

(e) Complaint investigations and opportunities for corrective action.

(1) When a complaint is received about a licensed or a unlicensed assisted living facility, DHS will do a complaint investigation of the facility. If the owner of an unlicensed facility denies DHS investigators access to a facility, DHS may, through the OAG or a local prosecutor's office, petition a district court for a temporary restraining order to inspect the facility.

(2) If the investigation indicates that there is a violation of minimum standards and the violation creates an immediate threat to the health and safety of a facility resident, DHS will suspend the license and order closing of the facility for a ten-day period.

(3) If the investigation indicates that there is a violation of minimum standards or licensing requirements and the violation is a threat to resident health and safety, DHS immediately makes a referral to the Attorney General's office to enjoin the facility's operation, enjoin the facility from violating standards or licensing requirements, and/or for assessment of civil monetary penalties.

(4) If the OAG does not take action on a civil penalty referral within 30 days of the referral, DHS will refer the case to the local prosecuting attorney.

(5) If the investigation indicates a violation of minimum standards or licensing requirements but the violation is not a threat to resident health and safety, DHS may notify the owner that he is in violation and make a referral to the local prosecuting attorney or the OAG only after the facility owner is given an opportunity to take appropriate action to come into compliance within a reasonable time.

(6) If the local prosecuting attorney refuses to prosecute a case, DHS may seek the assistance of the OAG.

(7) DHS may deny, suspend, or revoke the license of a licensed facility for violating the Personal Care Facility Licensing Act or rules adopted under that act.

(8) If further investigation or monitoring of a facility that has previously indicated that it will come into compliance, indicates that violations have continued, DHS may immediately seek injunctive or other appropriate relief in coordination and cooperation with the OAG or the local prosecuting attorney.

§702.405. Coordinated Services for Children and Youths.

(a) Overview.

(1) Pursuant to the Texas Human Resources Code, §41.0011, this memorandum of understanding has been developed by the Texas Department of Protective and Regulatory Services (TDPRS), Texas Commission for the Blind (TCB), Texas Department of Health (TDH), Texas Department of Human Services (TDHS), Texas Department of Mental Health and Mental Retardation (TXMHMR), Texas Education Agency (TEA), Texas Interagency Council on Early Childhood Intervention (ECI), Texas Juvenile Probation Commission (TJPC), Texas Rehabilitation Commission (TRC), and Texas Youth Commission (TYC), hereinafter referred to as "the agencies," in consultation with advocacy and consumer groups.

(2) The memorandum, as adopted by rule by each agency, provides for the implementation of a system of community resource coordination groups, hereinafter referred to as coordination groups, to coordinate services for children and youths who need services from more than one agency, hereinafter referred to as "children and youths with multi-agency needs" or, more briefly, as "children and youths."

(3) All coordination groups established pursuant to this memorandum must conform to the Model of Community Resource Coordination Groups (CRCG model) approved by the Commission on Children, Youth, and Family Services on April 27, 1990. This model is adopted by reference and may be obtained from:

(A) TDPRS, 701 West 51st St., Austin, Texas 78751;

(B) TCB, 4800 North Lamar Boulevard, Austin, Texas 78756;

(C) TDH, 1100 West 49th Street, Austin, Texas 78756

(D) TDHS, 701 West 51st St., Austin, Texas 78751;

(E) TXMHMR, 909 West 45th St., Austin, Texas 78756;

(F) TEA, 1701 North Congress, Austin, Texas 78701;

(G) ECI, 1100 West 49th St., Austin, Texas 78756;

(H) TJPC, 2015 South I.H. 35, Austin, Texas 78741;

(I) TRC, 4900 North Lamar Blvd., Austin, Texas 78751; or

(J) TYC, 4900 North Lamar Blvd., Austin, Texas 78751.

(4) As specified in subsection (c)(5) of this section, this memorandum also requires the agencies, the coordination groups, and the Texas Health and Human Services Commission, hereinafter referred to as "the commission," to work together to ensure that the commission's strategic plan for delivering health and human services in Texas includes appropriate plans for delivering coordinated services to children and youths.

(b) Role of the family. Although the primary purpose of this memorandum is to establish a system for interagency coordination of services to children and youths, the agencies:

(1) recognize the importance of the family in the life of each child and youth whom the agencies serve; and

(2) are committed to providing services pursuant to this memorandum in the most normal and least restrictive environments possible.

(c) Each agency's financial and statutory responsibilities.

(1) Each agency's financial and statutory responsibilities for children and youth are described in *Health and Human Services in Texas: A Reference Guide*, published by the commission.

(2) Each agency agrees to provide coordination groups with relevant additional information about its financial and statutory responsibilities when such information is necessary for the groups to meet their responsibilities. The additional information may include, but is not limited to, descriptions of subcategories of funding for different types of service such as investigation, risk prevention, family preservation, emergency shelter, diagnosis and evaluation, residential care, follow-up services after a stay in residential care, and information and referral assistance.

(3) Whenever necessary in particular cases, coordination groups are responsible for further clarifying the agencies' financial and service responsibilities.

(4) The agencies agree to seek the resources needed to comply with this memorandum.

(5) To the extent that operating under this memorandum helps the agencies to identify structural problems, gaps, and inefficiencies in the state's systems for delivering health and human services to children and youths with multi-agency needs, the agencies agree to give the commission information about the problems, gaps, and inefficiencies so identified. The agencies also agree to ask the coordination groups to provide such information. The commission, in turn, will appropriately incorporate information provided by the agencies and the coordination groups into the commission's strategic plan.

(d) Children and youths with multi-agency needs. For the purpose of this memorandum, a "child or youth with multi-agency needs" is a person who:

(1) is less than 22 years old;

(2) meets an agency's statutory age-limitations for eligibility;

(3) is now receiving services or has received them in the past; and

(4) needs services that require interagency coordination.

(e) Interagency cost-sharing.

(1) The agencies agree to share the cost of providing needed services when:

(A) a coordination group confirms that a referring agency cannot provide all of the services needed; and

(B) the needed services are within the financial capabilities and statutory responsibilities of one or more of the other agencies.

(2) Cost-sharing includes, but is not limited to:

(A) provision of services by more than one agency; and

(B) provision of services by:

(i) one or more agencies; and

(ii) one or more third parties under purchase-of-service contracts with one or more agencies.

(f) Eliminating duplication of services. Within the limits of existing legal authority, each coordination group must make reasonable efforts to eliminate duplication of services relating to the assessment and diagnosis, treatment, residential placement and care, and case management of children and youths with multi-agency needs. Each agency agrees to notify the governor's office about federal laws and regulations that cause duplication of services. Each agency also agrees to notify its board about rules that cause duplication of services, and to pursue amendments to state laws, rules, and policies when necessary to eliminate such duplication.

(g) Interagency dispute resolution.

(1) Each agency must designate a negotiator who is not a member of any coordination group to resolve disputes. The negotiator must have:

(A) decision-making authority over the agency's representative on the coordination group; and

(B) the ability to interpret policy and commit funds.

(2) When two or more members of a coordination group disagree about their respective agencies' service responsibilities, the coordination group must send the designated negotiators for those agencies written notification that a dispute exists. Within 45 days after receiving the written notification, the negotiators must confer together to resolve the dispute.

(3) When an interagency dispute cannot be resolved in the manner described in paragraph (2) of this subsection, the aggrieved party may refer the dispute to the Health and Human Services commissioner.

(h) Composition of coordination groups. Each coordination group must include one appointed representative from each participating state agency, and as many as five local representatives from the private sector. The private-sector representatives must be selected by their peers from private-sector agencies serving youths in the geographical area the coordination group serves. The private-sector representatives have the same status as state-agency representatives. The organizations they represent are considered member agencies of the coordination group, and they are encouraged to present cases from the private sector.

(i) Case identification and referral. Each coordination group must implement the procedures for identifying and referring cases specified in the CRCG model. Any member of a coordination group may refer the case of any eligible child or youth to the coordination group if the referring member's agency cannot otherwise provide or arrange all the services the child or youth needs.

(j) Convening coordination group meetings. Any member of a coordination group may convene a coordination group meeting pursuant to subsection (i) of this section. Each coordination group must establish procedures for scheduling meetings.

(k) Permissible nonattendance. A member agency's representative may be excused from attending a coordination group meeting if the coordination group determines that the member agency's service responsibilities do not apply to the child or youth whose services will be discussed at the meeting.

(l) Sharing confidential information. The members of each coordination group must treat all information about children and youths discussed at the group's meetings as confidential. Each member agency must ensure that the coordination group complies with the agency's legal requirements concerning disclosure of confidential records and information. When necessary, compliance may include case-by-case documentation of all parties reviewing a child's or youth's records.

(m) Implementing this memorandum. The state CRCG advisory committee, which includes private sector representatives and one representative from each participating state agency, must develop and recommend to the commissioners and executive directors of the agencies a comprehensive plan to implement this memorandum.

(n) Adoption by rule and revision by unanimous consent. Pursuant to §41.0011 of the Human Resources Code, each agency must adopt this memorandum by rule. The memorandum may be expanded, modified, or amended at any time by the unanimous written consent of the agencies.

§702.409. Memorandum of Understanding Regarding Service Delivery to Dysfunctional Families.

(a) The Texas Department of Protective and Regulatory Services, the Texas Youth Commission, and the Texas Juvenile Probation Commission, hereinafter referred to as "the agencies," agree to this memorandum of understanding (MOU) in compliance with Texas Human Resources Code §53.001.

(b) By July 15 of every odd-numbered year, or within 30 days after the Governor of Texas signs a general appropriations act, whichever is later, each of the agencies will determine which portion, if any, of its funding to designate for serving its clients through the joint contract(s) specified in subsection (c) of this section. None of the agencies is obligated to enter into the joint contracts specified in subsection (c) of this section unless all of the agencies elect to do so.

(c) Beginning on September 1, 1990, and by September 1 every year thereafter in which the agencies decide to enter into the joint contracts specified in this subsection, the agencies will award one or more joint contracts for nonresidential community services to help dysfunctional families in each agency's client population. At a minimum, each contract must include the following services:

(1) training in parenting skills;

(2) training in coping skills for youth, including communication, problem-solving, decision- making, and conflict-management skills;

(3) support groups for children of substance-abusing and dysfunctional families, and support groups for the children's parents; and

(4) individual counseling for a limited number of clients referred from the support groups specified in paragraph (3) of this subsection during family crises.

(d) All joint contracts awarded under the provisions of this section must be publicized and awarded in conformity with all applicable requirements of Chapter 69 of this title (relating to Contracted Services).

(e) The agencies will ensure that contracted services are available to clients by September 1 of every fiscal year in which the agencies enter into the joint contracts specified in subsection (c) of this section.

(f) The agencies initially adopted this section on September 11, 1990. The agencies will amend it whenever they agree to revisions.

(g) The agencies will meet at least once each year to review and consider revising this section before the beginning of the next fiscal year.

§702.413. Memorandum of Understanding (MOU) Concerning the Communities In Schools Program.

The Texas Department of Protective and Regulatory Services (PRS) adopts by reference 19 TAC §92.1003 (relating to Memorandum of Understanding Concerning the Communities In Schools (CIS) Program), as authorized by the Texas Family Code, §264.755. The MOU is effective October 1, 2000. This MOU clarifies the respective roles of the Texas Education Agency and PRS to obtain information from school districts, to encourage local businesses to support the CIS program, to direct the use of funds, and to maximize the effectiveness of the CIS 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 December 1, 2000.

TRD-200008344
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER G. TRAINING AND EDUCATION

40 TAC §§702.601, 702.605, 702.609, 702.613, 702.617, 702.621

The Texas Department of Protective and Regulatory Services (TDPRS) proposes new §§702.601, 702.605, 702.609, 702.613, 702.617, and 702.621, consisting of training and education, in its General Administration chapter. The purpose of the new sections is to bring the continuing education rules into compliance with the Texas Government Code, Chapter 656, State Employee Training Act. The new sections are written in question and answer format, and use other plain language techniques.

Mary Fields, Budget and Federal Funds Director, 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.

Ms. Fields 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 be in compliance with law and will be easier to understand. There will be no effect on large, small, or micro-businesses because the rules do not impose any new requirements or restrictions on persons outside of the agency. 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 Phoebe Knauer at (512) 438-5916 in TDPRS's Legal Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-146, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Under section 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 new sections are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs, and the Texas Government Code, Chapter 656, which imposes certain restrictions on training and education and requires state agencies to adopt rules concerning their training and education policies.

The new sections implement the Texas Government Code, Chapter 656.

§702.601. What Is the Purpose of This Subchapter?

This subchapter contains PRS policies on employee eligibility to participate in training and education programs, and on employee obligations upon receipt of training and education.

§702.605. What Is PRS's Policy on Training?

PRS encourages the professional development of all staff through training and education programs. PRS makes funds available for training and education in accordance with the State Employees Training Act, Texas Government Code, §§656.041-656.049.

§702.609. Can the Training or Education Be on Any Topic?

No. Training or education must be related to the employee's current duties or prospective duties.

§702.613. Can an Employee Be Required to Attend Training or Education?

Yes, if the training or education is related to the employee's duties or prospective duties.

§702.617. When Does PRS Provide Educational or Technical Training?

(a) PRS may provide training for an employee if the executive director or his designee determines that the training will:

(1) enhance the employee's ability to perform his current job duties, or enable the employee to perform prospective job duties; or

(2) benefit both PRS and the employee by:

(A) providing the employee with opportunities to meet professional development requirements;

(B) providing greater employee career planning choices; or

(C) introducing new, more efficient technologies to PRS.

(b) PRS may pay for the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other expenses of an instructor, student, or other participant in a training or education program.

(c) Approval to participate in a training or education program is subject to the availability of funds within the PRS budget, and supervisory approval.

§702.621. What Is the Employee's Obligation to PRS after Completing Education or Training?

(a) An employee who completes education or training for which PRS provided all or part of the required fees may be required to:

(1) remain employed with PRS for a specified period; and

(2) consult, instruct, or assist in disseminating the information acquired from training and education to other employees.

(b) If an employee receives training or education paid for by PRS that is covered by the Texas Government Code, Chapter 656, Subchapter D, and the employee does not perform his regular duties for three or more months in order to obtain the training, the employee must:

(1) work for PRS following the training for at least one month for each month of the training period; or

(2) pay PRS for all the costs associated with the training that were paid by PRS during the training period, including any of the employee's salary that was paid and not accounted for as paid vacation or compensatory leave; and

(3) sign a written acknowledgment and acceptance of the requirements specified in paragraphs (1) and (2) of this subsection.

(c) By an order adopted in a public meeting, the PRS board may waive the requirements in subsection (b) of this section and release an employee from the obligation to meet those requirements if the board finds it in the best interest of PRS or it is warranted because of an extreme personal hardship suffered by the employee.

(d) If an employee does not provide the services required in subsection (b)(1) of this section, provides those services for less than the required time, or fails to make payments required in subsection (b)(2) of this section, and the employee is not released from the obligation under subsection (c) of this section, the employee is liable for the costs described in subsection (b)(2) of this section, and for expenses incurred by PRS in obtaining payment, including reasonable attorney fees.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008357
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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CHAPTER 720. 24-HOUR CARE LICENSING
SUBCHAPTER A. STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §720.47, §720.55

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§720.47 and 720.55, concerning foster care study and required information, in its 24-Hour Care Licensing chapter. The purpose of the amendments is to delete the paragraphs of current rules that conflict with the Multi-Ethnic Placement Act of 1994 (MEPA), as amended (42 USC 622) and with the Removal of Barriers to Interethnic Adoption provisions of 1996 (IEP) (§1808, P.L 104-188). This federal legislation prohibits a child- placing agency, when making a foster or adoptive placement, from considering the race, color or national origin of the child or of the foster or adoptive parents. Child-placing agencies are also prohibited from considering the capacity of prospective foster or adoptive parents to meet the needs of a child relating to race, color or national origin.

Mary Fields, Budget and Federal Funds Director, 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.

Ms. Fields 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 to that the rules will comply with federal law. There will be no effect on large, small, or micro-businesses because the rules do not impose new requirements on the cost of doing business, do not require the purchase of any new equipment, and should not require any increased staff time in order to comply. 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 Lizet Alaniz at (512) 438- 4538 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-158, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Under section 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 amendments are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of department programs.

The amendments implement the Human Resources Code, §40.029, the Multi-Ethnic Placement Act of 1994 (MEPA), as amended (42 USC 622) and the Removal of Barriers to Interethnic Adoption provisions of 1996 (§1808, PL 104-188) (IEP).

§720.47. Foster Care Study.

(a) (No change.)

(b) The agency must conduct a foster home study for all family applicants being considered for verification as an agency foster family home or agency foster group home. The agency must obtain all available information about the foster home applicants regarding:

(1) - (8) (No change.)

~~[(9) sensitivity to, and feelings about, different socioeconomic, cultural, and ethnic groups in relation to the family's ability to provide foster care for and assist in maintaining the cultural or ethnic identity of children from different backgrounds;]~~

(9) [~~(10)~~] sensitivity to, and feelings about, maintaining sibling relationships;

(10) [~~(11)~~] expectations of, and plans for, foster children; and

(11) [~~(12)~~] the family's ability to work with specific kinds of behaviors and backgrounds.

(c) - (h) (No change.)

§720.55. Required Information.

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

(c) The agency must obtain all available information about the adoptive applicants regarding the following:

(1) - (8) (No change.)

~~[(9) sensitivity to, and feelings about, different socioeconomic, cultural, and ethnic groups in relation to the family's ability to provide an adoptive home and to maintain the cultural or ethnic identity of a child from a different background;]~~

(9) [~~(10)~~] expectations of, and plans for, adoptive children;

(10) [~~(11)~~] behavior, background, special needs status, or other characteristics of a potential adoptive child that the family cannot accept; and

(11) [~~(12)~~] financial status and ability to support a child, including employment history and insurance coverage.

(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 December 1, 2000.

TRD-200008373
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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CHAPTER 725. GENERAL LICENSING PROCEDURES

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§725.1810 and 725.4001; proposes the repeal of §§725.4002, 725.4004-725.4013, and 725.4017-725.4021; and proposes new §§725.4002-725.4006, concerning appeals of licensing staff decisions, in its General Licensing Procedures chapter. The purpose of the proposal is to incorporate by reference the procedural rules currently followed by the State Office of Administrative Hearings (SOAH) and bring all rules into compliance with current law.

Mary Fields, Budget and Federal Funds Director, 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.

Ms. Fields 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 to delete obsolete rules and consolidate the information into fewer rules in a more clear and concise manner. There will be no effect on large, small, or micro-businesses because the rules do not impose new requirements, do not require the purchase of any new equipment, and should not require any increased staff time to comply. 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 Carol Allen at (512) 438- 5339 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-153, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin,

Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Under section 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.

SUBCHAPTER S. ADMINISTRATIVE PROCEDURES

40 TAC §725.1810

The amendment is proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs, and HRC §42.072 (a), (b), and (e), which authorizes proceedings for a disciplinary action which are governed by the administrative procedure law, Chapter 2001 of the Government Code.

The amendment implements the Human Resources Code, §§40.029 and 42.072.

§725.1810. Administrative Penalties.

(a) Administrative penalties are fines imposed against a facility or family home, licensed or registered, when that facility or family home violates Chapter 42 of the Human Resources Code (HRC) or a rule or order adopted under that chapter. Nonmonetary, administrative penalties or remedies including, but not limited to, corrective action plans, probation, and evaluation periods shall be imposed, when appropriate, before monetary penalties. The Texas Department of Protective and Regulatory Services (TDPRS) may proceed to suspension, probation or revocation without imposing administrative penalties in any instance in which, in TDPRS's opinion, the violation is serious enough to warrant such action.

(1) Fines may be assessed after a provider has failed repeatedly within a three-month period to come into compliance with those standards identified in §725.4003(c) of this title (relating to Operations During Appeal of Denial or Revocation) [~~§725.4020 (f) and (g) of this title (relating to Judicial Review)~~] which pose a risk to the health and safety of children when violated, but where the violations were not serious enough to warrant more severe nonmonetary sanctions.

(2) (No change.)

(b)-(v) (No change.)

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008361
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER OO. APPEALS OF LICENSING STAFF DECISIONS

40 TAC §§725.4001 - 725.4006

The amendment and new sections are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs, and HRC §42.072 (a), (b), and (e), which authorizes proceedings for a disciplinary action which are governed by the administrative procedure law, Chapter 2001 of the Government Code.

The amendment and new sections implement the Human Resources Code, §§40.029 and 42.072.

§725.4001. Request for Appeal Hearing and Preliminary Procedures.

(a) The rules in this subchapter apply to hearings on licenses, certifications, [~~and~~] registrations, and listings, unless otherwise noted. The applicant, licensee, or holder of a certificate or registration has the right to request an appeal hearing on a department decision to deny [~~an application~~] or to revoke a license, certificate, [~~or~~] registration, or listing. To request an appeal hearing, the appellant must send a certified letter to the Docket Clerk in Legal Services, Texas Department of Protective and Regulatory Services, P.O. Box 15995, MC 019-2, Austin, Texas 78761-5995, [~~director of licensing~~] within 30 days after receipt of the adverse action notice. The appellant must include in the letter the reasons against denial or revocation. The appellant must send a copy of the letter to the licensing representative.

~~[(b) Within two weeks after the appellant mails the appeal request, the director of licensing must notify the appellant whether the request for an appeal hearing has been granted.]~~

(b) [~~(c)~~] If a request for an appeal is made [~~granted~~], the department [~~deputy for licensing~~] asks the State Office of Administrative Hearings (SOAH) [~~director of the Texas Department of Human Services' Hearings Division~~] to appoint an administrative law judge to conduct the proceedings and make a final decision in the case.

§725.4002. Purpose and Nature of Appeal Hearing.

(a) The purpose of the appeal hearing is to decide if the facts that existed at the time the department took action justify the action. The department presents evidence in support of the action taken. Then the appellant presents evidence to show that the action was not justified by the facts as they existed when the department made its decision.

(b) The appellant has the right to bring up facts which were not evaluated by the licensing representative. The appellant may also offer new interpretations of facts. Alleged changes that have been made in the facility or listed family home after the decision to deny or revoke the license, certification, registration, or listing are not directly relevant in the appeal hearing and may be excluded by the administrative law judge.

§725.4003. Operations During Appeal of Denial or Revocation

(a) The department's decision to deny or revoke a license, certification, registration, or listing is final and appealable to SOAH on the date the facility or listed family home receives a letter from the department indicating the denial or revocation. However, the facility or listed family home may continue to operate during the appeal to SOAH unless the denial or revocation is based on a violation that poses a risk to the health and safety of children. The department will notify the facility or family home if it cannot operate because of a violation that poses a risk to the health and safety of children.

(b) The facility or listed family home may seek injunctive relief to allow continued operation during an appeal from a district court in Travis County or in the county where the facility or family home is located.

(c) Violations of the following standards pose a risk to the health and safety of children:

(1) Registered Family Homes.

(A) §715.102(e) and (g) of this title (relating to Caregiver Qualifications);

(B) §715.103(a)-(c) of this title (relating to People in the Home);

(C) §715.104 of this title (relating to the Number of Children in Care);

(D) §715.106(a) and (d)(1), (3), and (4) of this title (relating to Health and Safety);

(E) §715.107(a), (b), and (d) of this title (relating to Child Care).

(2) Kindergartens and Nursery Schools.

(A) §715.202(e) of this title (relating to General Administration);

(B) §715.205(f) of this title (relating to Director Qualifications);

(C) §715.206 of this title (relating to Director Responsibilities);

(D) §715.207(e), (g)-(l), (n), and (o) of this title (relating to Staff Qualifications and Responsibilities);

(E) §715.209 of this title (relating to Staff-Child Ratio);

(F) §715.210(c) of this title (relating to Space);

(G) §715.215 of this title (relating to Fire);

(H) §715.216 of this title (relating to Sanitation);

(I) §715.217 of this title (relating to Safety);

(J) §715.219 of this title (relating to Illness or Injury);

(K) §715.220 of this title (relating to Medications);

(L) §715.223(b) and (e) of this title (relating to Food Service);

(M) §715.224(a) and (b)(2) and (5)-(7) of this title (relating to Operation);

(N) §715.225 of this title (relating to Discipline and Guidance);

(O) §715.226 of this title (relating to Children with Need for Special Care);

(P) §715.227 of this title (relating to Water Activities);

(Q) §715.228 of this title (relating to Transportation).

(3) Schools: Grades Kindergarten and Above.

(A) §715.302(e) of this title (relating to General Administration);

(B) §715.305(c) of this title (relating to Director Qualifications);

(C) §715.306 of this title (relating to Director Responsibilities);

(D) §715.307(d), (f)-(k), (m), and (o) of this title (relating to Staff Qualifications and Responsibilities);

(E) §715.309 of this title (relating to Staff-Child Ratio);

(F) §715.310(c) of this title (relating to Space);

(G) §715.315 of this title (relating to Fire);

(H) §715.316 of this title (relating to Sanitation);

(I) §715.317 of this title (relating to Safety);

(J) §715.319 of this title (relating to Illness or Injury);

(K) §715.320 of this title (relating to Medications);

(L) §715.323(b) and (e) of this title (relating to Food Service);

(M) §715.324(a) and (b)(2) and (5)-(7) of this title (relating to Operation);

(N) §715.325 of this title (relating to Discipline and Guidance);

(O) §715.326 of this title (relating to Children with Need for Special Care);

(P) §715.327 of this title (relating to Water Activities);

(Q) §715.328 of this title (relating to Transportation).

(4) Day Care Centers.

(A) §715.406(c) and (d) of this title (relating to Parental Communication);

(B) §715.407 of this title (relating to Personnel Restrictions for Criminal History and Central Registry Background);

(C) §715.408(b)(2)(A) of this title (relating to Director Qualifications and Responsibilities);

(D) §715.409(c)(1)(A)-(D) and (c)(3)-(5) of this title (relating to Staff Qualifications and Responsibilities);

(E) §715.415 of this title (relating to Discipline and Guidance);

(F) §715.417 of this title (relating to Child/Staff Ratios and Groupings);

(G) §715.418 of this title (relating to Night Care);

(H) §715.419 of this title (relating to Additional Requirements for Children under 18 Months Old);

(I) §715.420(a), (b), (d), and (g) of this title (relating to Field Trips);

(J) §715.421 of this title (relating to Water Activities);

(K) §715.422 of this title (relating to Transporting Children);

(L) §715.423 of this title (relating to Safety);

(M) §715.424 of this title (relating to Sanitation);

(N) §715.425 of this title (relating to Fire, Fire Safety, and Emergency Precautions);

(O) §715.426(a), (e), and (f) of this title (relating to Illness and Injury);

(P) §715.427 of this title (relating to Medications).

(5) Group Day Care Homes.

(A) §715.605(b) of this title (relating to Director Qualifications);

(B) §715.606 of this title (relating to Director Responsibilities);

(C) §715.607(c) and (f)-(m) of this title (relating to Staff Qualifications and Responsibilities);

(D) §715.609 of this title (relating to Staff-Child Ratio);

(E) §715.614 of this title (relating to Fire);

(F) §715.615 of this title (relating to Sanitation);

(G) §715.616 of this title (relating to Safety);

(H) §715.618 of this title (relating to Illness or Injury);

(I) §715.622(a) and (b) of this title (relating to Food Service);

(J) §715.624(a) and (b)(2) and (5)-(7) of this title (relating to Operation);

(K) §715.625 of this title (relating to Discipline and Guidance);

(L) §715.626 of this title (relating to Infant and Toddler Care);

(M) §715.627 of this title (relating to Children with Need for Special Care);

(N) §715.628 of this title (relating to Night Care);

(O) §715.629 of this title (relating to Water Activities);

(P) §715.630 of this title (relating to Transportation).

(6) Drop-In Care Centers.

(A) §715.702(d) and (e) of this title (relating to General Administration);

(B) §715.705(f) of this title (relating to Director Qualifications);

(C) §715.706 of this title (relating to Director Responsibilities);

(D) §715.707(c), (e)-(j), (l), and (m) of this title (relating to Staff Qualifications and Responsibilities);

(E) §715.709 of this title (relating to Staff-Child Ratio);

(F) §715.710(c) of this title (relating to Space);

(G) §715.715 of this title (relating to Fire);

(H) §715.716 of this title (relating to Sanitation);

(I) §715.717 of this title (relating to Safety);

(J) §715.719 of this title (relating to Illness or Injury);

(K) §715.720 of this title (relating to Medications);

(L) §715.723(a), (b), and (e) of this title (relating to Food Service and Nutrition);

(M) §715.724(a) and (c)(2) and (5)-(7) of this title (relating to Operation);

(N) §715.725 of this title (relating to Discipline and Guidance);

(O) §715.726(a) of this title (relating to Infant Care);

(P) §715.727 of this title (relating to Children with Need for Special Care);

(Q) §715.728 of this title (relating to Night Care);

(R) §715.729 of this title (relating to Transportation).

(7) Child-Placing Agencies.

(A) §720.29(a)(1)-(3) of this title (relating to Children's Rights);

(B) §720.30(a)(1) and (3)-(7) and (b)(3)-(5) of this title (relating to Medical and Dental Care);

(C) §720.31(a)(2)(B)-(C), (3)-(5) and (8), and (b)(1)-(6) and (8)-(9) of this title (relating to Problem Management);

(D) §720.32(2) and (4) of this title (relating to Serious Incident Reports);

(E) §720.33(5) of this title (relating to Client Records);

(F) §720.35(1)-(6) of this title (relating to General Personnel Requirements);

(G) §720.38(b) of this title (relating to Foster Parent and Agency Home Child-Care Staff);

(H) §720.39(b)(3) and (c)(3)(A) of this title (relating to Training Requirements);

(I) §720.41(c)(1), (d), (e), and (g) of this title (relating to Substitute Care Intake);

(J) §720.42(b)-(d) of this title (relating to Substitute Care Placement);

(K) §720.43(e) of this title (relating to Initial Service Plan);

(L) §720.45(b)(4) of this title (relating to Subsequent Placement);

(M) §720.47(b)(4)-(5), (c), and (d)(2)-(3) of this title (relating to Foster Care Study);

(N) §720.48(a)-(d) of this title (relating to Foster Home Verification);

(O) §720.49(a), (b), and (d) of this title (relating to Foster Home Management);

(P) §720.52(b), (c), and (d) of this title (relating to Birth Parent Preparation);

(Q) §720.53(b) of this title (relating to Adoptive Child Preparation);

(R) §720.55(b)(1) and (4) and (c)(2), (4), and (5) of this title (relating to Required Information);

(S) §720.56(d) of this title (relating to Pre-Placement Requirements);

(T) §720.57(c)-(e) and (g) of this title (relating to Adoptive Placement Requirements);

(U) §720.58(a)(2), (b), and (e) of this title (relating to Pre-Adoption Consummation Activities);

(V) §720.66 of this title (relating to Serious Incident Reporting Requirements);

(W) §720.67(1), (2), (5)(A)-(C), (H), and (I) of this title (relating to Requirements: Health, Social, Educational, and Genetic History Report).

(8) Agency Homes.

(A) §720.117(a), (c), (e), and (f) of this title (relating to Foster Family Qualifications);

(B) §720.118(a) and (c) of this title (relating to Admission);

(C) §720.120(c), (d), and (e)(2) of this title (relating to Children's Rights);

(D) §720.121 of this title (relating to Nutrition);

(E) §720.122(a)-(b) of this title (relating to Environment);

(F) §720.123(1) and (3) of this title (relating to Medical);

(G) §720.125(a)-(b) of this title (relating to Emergency Reports);

(H) §720.126(a)-(b) of this title (relating to Other Requirements).

(9) Habilitative and Therapeutic Agency Homes.

(A) §720.131(a) of this title (relating to Personnel Staffing Standards for Habilitative Agency Homes);

(B) §720.133(c)(1), (d)(1)(A)-(F) and (2) and (e)(2) of this title (relating to Child Care, Development, and Training Standards for Habilitative Agency Homes);

(C) §720.134(a) of this title (relating to Buildings, Grounds, and Equipment Standards for Habilitative Agency Homes);

(D) §720.135(a) of this title (relating to Personnel Standards for Therapeutic Agency Homes);

(E) §720.137(c)(1)(A)-(E) and (G) and (2) and (d) of this title (relating to Child Care, Development, and Training Standards for Therapeutic Agency Homes).

(10) Habilitative and Therapeutic Family Homes.

(A) §720.201(a) of this title (relating to Personnel - Staffing for Habilitative Family Homes);

(B) §720.203(c)(1), (d)(1)(A), (B), (D)-(F), (H), (2), and (e)(2) of this title (relating to Child Care, Development, and Training Standards for Habilitative Family Homes);

(C) §720.204 of this title (relating to Buildings, Grounds, and Equipment Standards for Habilitative Family Homes);

(D) §720.205(a) of this title (relating to Personnel Standards for Therapeutic Family Homes);

(E) §720.207(c)(1)(A)-(B), (D)-(F), (H), (2)-(3), and (d) of this title (relating to Child Care, Development, and Training Standards for Therapeutic Family Homes).

(11) Foster Family Homes.

(A) §720.231(a), (c), (d) of this title (relating to Qualifications);

(B) §720.233(a), (c), and (d) of this title (relating to Reports and Records);

(C) §720.234(d) and (e) of this title (relating to Other Requirements);

(D) §720.235(e) of this title (relating to Admission Policies);

(E) §720.243(h)(1), (2), (4), (5), and (8)-(10), (i), and (j) of this title (relating to Children's Rights and Privileges);

(F) §720.244(b)(1) and (3), and (c)-(e) of this title (relating to Medical and Dental Care);

(G) §720.245 of this title (relating to Nutrition);

(H) §720.246 of this title (relating to Health and Safety);

(I) §720.247(a) of this title (relating to Environment).

(12) Foster Group Homes.

(A) §720.302(a), (c), and (e)-(g) of this title (relating to Requirements for Home Responsible to Child-Placing Agency);

(B) §720.303(a), (c)(3), (d)-(f), and (h) of this title (relating to Staffing and Training);

(C) §720.305(f)-(h) of this title (relating to Children's Rights and Privileges);

(D) §720.306(a)(1), (3), and (6) of this title (relating to Medical and Dental Care);

(E) §720.307(2)-(3) of this title (relating to Nutrition);

(F) §720.308(a), (c), and (d) of this title (relating to Health and Safety);

(G) §720.309(a) of this title (relating to Environment);

(H) §720.310 of this title (relating to Food Preparation, Storage, and Equipment);

(I) §720.311(a)-(b) of this title (relating to Reports and Records);

(J) §720.312(a) of this title (relating to Other Requirements);

(K) §720.316(a) and (c)-(f) of this title (relating to Personnel Requirements for Independent Foster Group Homes);

(L) §720.317(a), (c), and (d) of this title (relating to Staffing of Independent Foster Group Homes);

(M) §720.318(c) of this title (relating to Training of Staff in Independent Foster Group Homes);

(N) §720.319(a), (b), (f), and (g) of this title (relating to Admission Policies of Independent Foster Group Homes);

(O) §720.326(l)(1)-(2), (4)-(5) and (7)-(9), and (m)-(n) of this title (relating to Children's Rights and Privileges in an Independent Foster Group Home);

(P) §720.327(d), (e), and (f)(1), (3), and (6) of this title (relating to Medical and Dental Care in the Independent Foster Group Home);

(Q) §720.328(3) of this title (relating to Nutrition);

(R) §720.330(a), (c), and (d) of this title (relating to Health and Safety in the Independent Foster Group Home);

(S) §720.331(a) of this title (relating to Environment of the Independent Foster Group Home);

(T) §720.332 of this title (relating to Food Preparation, Storage, and Equipment in the Independent Foster Group Home);

(U) §720.335(a), (c), (d), (g), and (h) of this title (relating to Emergency Reports and Records in the Independent Foster Group Home).

(13) Habilitative and Therapeutic Group Homes Responsible to a Child-Placing Agency and for Independent Habilitative and Therapeutic Group Homes.

(A) §720.368(a) of this title (relating to Personnel Staffing Standards for Independent Habilitative Group Homes);

(B) §720.370(c)(1), (d)(1)(A)-(F) and (H), (d)(2), and (e)(2) of this title (relating to Child Care, Development, and Training Standards for Independent Habilitative Group Homes);

(C) §720.371 of this title (relating to Buildings, Grounds, and Equipment Standards for Independent Habilitative Group Homes);

(D) §720.372(a) of this title (relating to Personnel Standards for Independent Therapeutic Group Homes);

(E) §720.374(c)(1)(A)-(B), (D)-(F), (H), and (c)(2) of this title (relating to Child Care, Development, and Training Standards for Independent Therapeutic Group Homes).

(14) 24-Hour Care Facilities.

(A) §720.402(c) of this title (relating to Governing Body);

(B) §720.403(a) of this title (relating to General Administration);

(C) §720.406(b), (d), and (e) of this title (relating to Administrative Reports and Records);

(D) §720.408(c), (d), and (f) of this title (relating to Personnel Policies and Practices);

(E) §720.410(d) and (e) of this title (relating to Volunteers);

(F) §720.411(a)(1) and (b) of this title (relating to General Staffing);

(G) §720.414(a)-(c) of this title (relating to Staff-Child Ratio);

(H) §720.415(a)(2), (b), and (c) of this title (relating to Training and Orientation);

(I) §720.417(d) and (e) of this title (relating to Admission Procedures);

(J) §720.423(b)-(f) of this title (relating to Problem Management);

(K) §720.424 of this title (relating to Restraining Measures);

(L) §720.425(a)-(c) of this title (relating to Personal Restraint);

(M) §720.426(a) of this title (relating to Child Care);

(N) §720.427(a)-(d), (f), (h), (k), (l)(1), (p), (q), and (r)(2) of this title (relating to Medical and Dental Care);

(O) §720.428(a) and (e) of this title (relating to Nutrition);

(P) §720.429(a) and (c)-(f) of this title (relating to Health and Safety);

(Q) §720.430(b)-(d) of this title (relating to Environment);

(R) §720.431 of this title (relating to Transportation);

(S) §720.432(b) of this title (relating to Food Preparation, Storage, and Equipment);

(T) §720.441 of this title (relating to Staff-Child Ratio-Institutions Providing Basic Child Care);

(U) §720.446(a), (d), and (e) of this title (relating to Problem Management: Institutions Providing Basic Child Care);

(V) §720.447 of this title (relating to Restraining Measures: Institutions Providing Basic Child Care);

(W) §720.449 of this title (relating to Environment - Institutions Providing Basic Child Care);

(X) §720.502 of this title (relating to Staff-Child Ratio - Institutions Serving Mentally Retarded Children);

(Y) §720.508 of this title (relating to Problem Management - Institutions Serving Mentally Retarded Children);

(Z) §720.509 of this title (relating to Restraining Measures - Institutions Serving Mentally Retarded Children);

(AA) §720.510 of this title (relating to Protective Devices - Institutions Serving Mentally Retarded Children);

(BB) §720.511(a)-(d) of this title (relating to Mechanical Restraint - Institutions Serving Mentally Retarded Children);

(CC) §720.514 of this title (relating to Health and Safety - Institutions Serving Mentally Retarded Children);

(DD) §720.515(c) of this title (relating to Environment - Institutions Serving Mentally Retarded Children);

(EE) §720.522 of this title (relating to Staff Child Ratio - Residential Treatment Centers);

(FF) §720.523(a) and (c) of this title (relating to Training - Residential Treatment Centers);

(GG) §720.530 of this title (relating to Problem Management - Residential Treatment Centers);

(HH) §720.531 of this title (relating to Restraining Measures - Residential Treatment Centers);

(II) §720.532 of this title (relating to Protective Devices - Residential Treatment Centers);

(JJ) §720.533(a)-(d) of this title (relating to Mechanical Restraint - Residential Treatment Centers);

(KK) §720.534 of this title (relating to Seclusion - Residential Treatment Centers);

(LL) §720.536 of this title (relating to Health and Safety - Residential Treatment Centers);

(MM) §720.537 of this title (relating to Environment - Residential Treatment Centers);

(NN) §720.541 of this title (relating to Staff-Child Ratio - Halfway Houses);

(OO) §720.546 of this title (relating to Problem Management - Halfway Houses);

(PP) §720.547 of this title (relating to Restraining Measures - Halfway Houses);

(QQ) §720.549(b) of this title (relating to Environment - Halfway Houses);

(RR) §720.551 of this title (relating to Staff-Child Ratio - Therapeutic Camps);

(SS) §720.556 of this title (relating to Problem Management - Therapeutic Camps);

(TT) §720.557 of this title (relating to Restraining Measures - Therapeutic Camps);

(UU) §720.559(a)-(b) of this title (relating to Medical and Dental Care -Therapeutic Camps);

(VV) §720.560 of this title (relating to Environment - Therapeutic Camps);

(WW) §720.571(a), (f), and (g) of this title (relating to Facilities Providing Care for Children and Adults);

(XX) §720.572 of this title (relating to Texas Department of Health - Minimum Standards of Environmental Health for Texas Department of Protective and Regulatory Services Licensed Therapeutic Camps - Permanent Camps);

(YY) §720.573 of this title (relating to Texas Department of Health - Minimum Standards of Environmental Health for Texas Department of Protective and Regulatory Services Licensed Therapeutic Camps - Primitive or Wilderness Camps);

(ZZ) §720.574 of this title (relating to Additional Minimum Standards for Institutions Serving Mentally Retarded Children with Primary Medical Needs).

(15) Emergency Shelters.

(A) §720.902(d) and (e) of this title (relating to Governing Body Responsibilities);

(B) §720.905(a), (c), (e), (f), (i), and (j) of this title (relating to Reports and Records);

(C) §720.907(a), (e), and (f) of this title (relating to Administrator Qualifications and Responsibilities);

(D) §720.908(b) and (c) of this title (relating to Staffing);

(E) §720.909(a), (b), and (c) of this title (relating to Qualifications and Responsibilities);

(F) §720.910(c)(3) of this title (relating to Training);

(G) §720.912(a)-(c) and (i)-(k) of this title (relating to Admission Policies);

(H) §720.914(b)(2) of this title (relating to Children's Records);

(I) §720.915(c) and (d) of this title (relating to Daily Care);

(J) §720.916(l)(1)-(3) and (5)-(9), (m), and (n) of this title (relating to Children's Rights);

(K) §720.917(b)-(g) of this title (relating to Medical and Dental Care);

(L) §720.918(4) of this title (relating to Nutrition);

(M) §720.920(a), (c), and (d) of this title (relating to Health and Safety);

(N) §720.921(a), (c), and (g) of this title (relating to Environment);

(O) §720.922 of this title (relating to Food Preparation, Storage, and Equipment).

(16) Child-Care Facilities Serving Children with Autistic-like Behavior.

(A) §720.1501(a) and (c) of this title (relating to Staffing);

(B) §720.1502(b) of this title (relating to Training);

(C) §720.1504(c)(2) of this title (relating to Treatment Plan);

(D) §720.1505(a)-(c), (d)(1)-(2), (f), (g), (h)(1) and (3), and (i)-(l) of this title (relating to Behavior Therapy);

(E) §720.1506 of this title (relating to Medical Therapy);

(F) §720.1507(a)-(d), (e)(1)-(4), and (f)-(k) of this title (relating to Mechanical Restraint).

§725.4004. Procedural Rules for Appeals.

The following procedural rules apply to appeals of licensing staff decisions and are incorporated into this rule by reference:

(1) rules of the State Office of Administrative Hearings (SOAH) found at 1 TAC Chapters 155, 157 and 161 (relating to Rules of Procedure, Temporary Administrative Law Judge, and Requests for Records);

(2) the Texas Government Code, Chapter 2001, Administrative Procedure Act (APA) rules, to the extent that they do not conflict with the SOAH rules; and

(3) the Texas Rules of Civil Procedure, to the extent that they do not conflict with SOAH or APA rules.

§725.4005. Defaults.

If the appellant does not appear at the appeal hearing, the administrative law judge may enter a default decision in favor of the department.

§725.4006. Release and Appeal Hearings Combined into Single Hearing.

If an adverse action against a facility is based on a finding of child abuse or neglect, and the adverse action is also the subject of an appeal from an anticipated release of the name of an alleged perpetrator of the abuse or neglect from the department's central registry, the administrative law judge (ALJ) may hear issues related to the adverse action and the release of central registry information in the same hearing. The ALJ's judgment must reflect a determination on the issues of the revocation or denial and the appropriateness of the release of central registry information.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008362
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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40 TAC §§725.4002, 725.4004 - 725.4013, 725.4017 - 725.4021

(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 Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs, and HRC §42.072 (a), (b), and (e), which authorizes

proceedings for a disciplinary action which are governed by the administrative procedure law, Chapter 2001 of the Government Code.

The repeals implement the Human Resources Code, §§40.029 and 42.072.

§725.4002. Operation Pending an Appeal.

§725.4004. Notice of the Hearing.

§725.4005. Amended Notice.

§725.4006. Nature of the Hearing.

§725.4007. Appellant's Right to Representation.

§725.4008. Withdrawal of Hearing Request and Informal Disposition.

§725.4009. General Rights of Parties to a Hearing.

§725.4010. Defaults, Postponements, and Continuations.

§725.4011. Hearing Record.

§725.4012. Communication.

§725.4013. Rules of Evidence.

§725.4017. Decision, Orders, and Notification.

§725.4018. Rehearing Requested.

§725.4019. Decision Records.

§725.4020. Judicial Review.

§725.4021. Appeal Hearing General Procedures.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008363
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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CHAPTER 734. PUBLIC INFORMATION

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of Chapter 734, consisting of §§734.1-734.3, 734.11-734.19, 734.31, and 734.40, concerning Public Information. As a result of the rule review required by the Texas Government Code, §2001.039 and the General Appropriations Act of 1997, Article IX, §167, TDPRS is proposing to delete the obsolete rules in this chapter. Also in this issue of the *Texas Register,* TDPRS is proposing new public information rules in Subchapter C, Agency Records and Information, of Chapter 702, General Administration.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Fields 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 repeal will be that obsolete rules will be deleted. There will be no effect on large, small, or micro-businesses because the rules do not change any procedures. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Questions about the content of the proposal may be directed to Phoebe Knauer at (512) 438-5916 in TDPRS's Legal Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-138, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Under section 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.

SUBCHAPTER A. DISCLOSURE OF INFORMATION

40 TAC §§734.1 - 734.3

(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 Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The repeals implement the Human Resources Code, §40.029.

§734.1. Compliance with Public Information Act.

§734.2. Information about Medical Providers.

§734.3. General Principles.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008351
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
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SUBCHAPTER B. CONFIDENTIALITY OF INFORMATION

40 TAC §§734.11 - 734.19

(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 Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The repeals implement the Human Resources Code, §40.029.

§734.11. Confidential Nature of the Case Record.
§734.12. Restrictions on Disclosure of Information.
§734.13. Inquiries from Internal Revenue Service.
§734.14. Inquiries from Other Agencies.
§734.15. Confidential Nature of Medical Information.
§734.16. Requesting Medical Information from Other Agencies.
§734.17. Furnishing Medical Information to Other Agencies.
§734.18. Custody of Records.
§734.19. Procedure for Preventing Disclosures of Information.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008352
C. Ed Davis
Deputy Director, Legal Services
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Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER D. RECORDS MANAGEMENT

40 TAC §734.31

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The repeal implements the Human Resources Code, §40.029.

§734.31. Retention of Records.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008353
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER E. PUBLIC INTEREST INFORMATION

40 TAC §734.40

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The repeal implements the Human Resources Code, §40.029.

§734.40. Public Interest; Complaints.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008354
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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CHAPTER 736. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of Chapter 736, consisting of §§736.501-736.508, 736.701, 736.901, and 736.902, concerning Memoranda of Understanding with Other State Agencies. As part of the rule review required by the Texas Government Code, §2001.039 and the General Appropriations Act of 1997, Article IX, §167, TDPRS is proposing to delete the obsolete rules in this chapter. Also in this issue of the *Texas Register,* TDPRS is proposing new memoranda of understanding with other state agencies rules in Chapter 702, General Administration.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Fields 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 repeal will be that obsolete rules will be deleted. There will be no effect on large, small, or micro-businesses because the rules do not change any procedures. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Questions about the content of the proposal may be directed to Phoebe Knauer at (512) 438-5916 in TDPRS's Legal Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-137, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Under section 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.

SUBCHAPTER E. MEMORANDA OF UNDERSTANDING FOR COORDINATION OF APS INVESTIGATIONS

40 TAC §§736.501 - 736.508

(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 Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The repeals implement the Human Resources Code, §40.029.

§736.501. Memorandum of Understanding with the Texas Department on Aging.

§736.502. Memorandum of Understanding with the Texas Commission on Alcohol and Drug Abuse.

§736.503. Memorandum of Understanding with the Texas School for the Deaf.

§736.504. Memorandum of Understanding with the Texas School for the Blind.

§736.505. Memorandum of Understanding with the Texas Department of Mental Health and Mental Retardation.

§736.506. Memorandum of Understanding with the Texas Department of Health.

§736.507. Memorandum of Understanding with the Texas Commission for the Blind.

§736.508. Assisted Living Facilities.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008345
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER G. MEMORANDUM OF UNDERSTANDING FOR COORDINATED SERVICES TO CHILDREN AND YOUTHS

40 TAC §736.701

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The repeal implements the Human Resources Code, §40.029.

§736.701. Coordinated Services for Children and Youths.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008346
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER I. MEMORANDUM OF UNDERSTANDING FOR CHILD PROTECTIVE SERVICES

40 TAC §736.901, §736.902

(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 Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The repeals implement the Human Resources Code, §40.029.

§736.901. Memorandum of Understanding Regarding Service Delivery to Dysfunctional Families.

§736.902. Memorandum of Understanding on Service Delivery to Runaway 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.

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008347
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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CHAPTER 742. CONTINUING EDUCATION

SUBCHAPTER A. POLICY AND PROCEDURES

40 TAC §§742.1-742.5, 742.9-742.12

(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 Protective and Regulatory Services or in the

Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of Chapter 742, consisting to §§742.1-742.5, and 742.9-742.12, concerning Continuing Education. As part of the rule review required by the Texas Government Code, §2001.039 and the General Appropriations Act of 1997, Article IX, §167, TDPRS is proposing to delete the obsolete rules in this chapter. Also in this issue of the *Texas Register,* TDPRS is proposing new training and education rules in Chapter 702, General Administration.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Fields 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 repeal will be that obsolete rules will be deleted. There will be no effect on large, small, or micro-businesses because the rules concern internal operating procedures. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

Questions about the content of the proposal may be directed to Phoebe Knauer at (512) 438-5916 in TDPRS's Legal Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-146, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Under section 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 (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The repeals implement the Human Resources Code, §40.029.

§742.1. Legal Base for Educational Contracts.

§742.2. Graduate School Contracts.

§742.3. Procedures for Establishing a Contract between the School and the Department.

§742.4. Undergraduate School Contracts.

§742.5. Field Placement Contracts.

§742.9. Financial Assistance to Students.

§742.10. Student Selection Criteria and Procedures.

§742.11. Agreement to Seek Employment.

§742.12. FFP Adjustment Procedure.

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

Filed with the Office of the Secretary of State, on December 1, 2000.

TRD-200008358
C. Ed Davis
Deputy Directory, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 26, 2001
For further information, please call: (512) 438-3437

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) proposes the repeal of and new Chapter 800 General Administration §800.2, relating to definitions.

Purpose: The purpose of the amendment is to clarify terms utilized in the Commission's rules which are contained in Title 40, Part 20, Chapter 800 et seq. of the Texas Administrative Code.

More specifically, one purpose of the amendment is to provide clarity regarding the role of the Commission and the role of the Agency in implementing the mission of the Texas Workforce Commission. The rule clarifies that "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

For the purpose of clarity and conformity with more recent references and terms the following definitions are included in the general definitions section:

Agency, Allocation, Board, Child Care, Choices, Commission, Core Outcome Measures, Executive Director, Food Stamp Employment and Training, One-Stop Service Delivery Network, Performance Measure, Performance Standard, Program Year, TANF, TCWEC, Texas Workforce Center Partner, WIA, and Local Workforce Development Area.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

there are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule;

there are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

there are anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or

administering the rule because small businesses are not regulated or required to do anything by the rule.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of the proposed amendment.

Barbara Cigainero, Director of Workforce Development, has determined that the public benefit anticipated as a result of the rules as proposed will be to clarify and improve the state and local partnership in policy making and service delivery that will ensure that recipients of temporary cash assistance receive services to aid them in assuming their responsibility to move quickly into work or work activities leading to self-sufficiency.

Comments on the proposed rules may be submitted to Barbara Cigainero, Director of Workforce Development, Texas Workforce Commission, 101 East 15th Street, Room 504-T, Austin, Texas 78778; Fax Number 512-463-2209; E-mail to Barbara.Cigainero@twc.state.tx.us.

Comments must be received by the Commission no later than thirty days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2

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

The rule is repealed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rule affects Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§800.2. 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 December 4, 2000.

TRD-200008415
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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The new rule is proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rule affects Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§800.2. Definitions.

The following words and terms, when used in this Part 20, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this Part 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(2) Allocation--The amount approved by the Commission for expenditures during a specified period, according to specific state and federal requirements.

(3) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this Part 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(4) Child Care--Child care services funded through the Agency, which may include services funded under the Child Care and Development Fund, Welfare-to-Work Formula Grants, WIA, and other funds available to the Agency or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(5) Choices--The employment and training activities created under §31.0126 of the Human Resources Code and funded under TANF (42 U.S.C.A. 601 et seq.) to assist persons who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment. Formerly known as Job Opportunities and Basic Skills Training (JOBS).

(6) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this Part 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(7) Core Outcome Measures--Workforce development services performance measures adopted by the Governor and developed and recommended through the Texas Council on Workforce and Economic Competitiveness (TCWEC). The Core Outcome Measures have been adjusted to allow for a follow-up period of six months in lieu of the one-year period established by TCWEC.

(8) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

(9) Food Stamp Employment and Training (FSE&T) Activities--The activities authorized and engaged in as specified by federal Food Stamp Employment and Training statutes and regulations (7 U.S.C.A. 2011), and Chapter 813 of this title relating to Food Stamp Employment and Training.

(10) One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment, educational and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance availability of services through the use of all available access and coordination methods, including telephonic and electronic methods. Also referred to as the Texas Workforce Network.

(11) Performance Measure--An expected performance outcome or result.

(12) Performance Standard--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Measures.

(13) Program Year--The twelve-month period applicable to the following as specified:

(A) Child Care: September 1--August 31;

(B) Choices: September 1--August 31;

(C) Welfare-to-Work: September 1--August 31;

(D) Food Stamp Employment and Training: September 1--August 31;

(E) WIA Adult: July 1--June 30;

(F) WIA Dislocated Worker: July 1--June 30; and

(G) WIA Youth: July 1--June 30.

(14) TANF - Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 et seq.) and the Temporary Assistance for Needy Families statutes and regulations. (42 U.S.C.A. §601 et seq., 45 C.F.R. Parts 260-265) Formerly named Aid to Families with Dependent Children (AFDC).

(15) TCWEC--Texas Council on Workforce and Economic Competitiveness appointed by the Governor pursuant to Texas Government Code § 2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TCWEC maintains the duties, responsibilities, powers and limitations as provided in Texas Government Code §§2308.101-2308.105.

(16) Texas Workforce Center Partner--an entity which carries out a workforce investment, educational or other human resources program or activity, and which participates in the operation of the One-Stop Service Delivery Network in a local workforce development area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

(17) WIA--Workforce Investment Act, Public Law 105-220, 29 U.S.C.A. §2801 et seq.

(18) Local Workforce Development Area--Workforce development areas designated by the Governor pursuant to Texas Government Code § 2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A. §§2831 and 2939).

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008414
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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CHAPTER 811. CHOICES

The Texas Workforce Commission proposes the repeal of Chapter 811 Choices, Subchapter A General Provisions §§811.1-811.2, Subchapter B Eligibility and Participation §§811.11, 811.20, Subchapter C Job Search-Related Activities §§811.31-811.34, Subchapter D Work-Based Programs §§811.41-811.45, Subchapter E Education and Other Training Activities §§811.61-811.65, Subchapter F Support Services §§811.81-811.87, Subchapter G Appeals §811.101; and new Chapter 811 Choices Subchapter A General Provisions §§811.1-811.4, Subchapter B Access to Choices Services §§811.11-811.14, Subchapter C Choices Services §§811.21-811.37, Subchapter D Restrictions on Choices Services §811.51, Subchapter E Support Services and Other Initiatives §§811.61-811.67, Subchapter F Appeals §§811.71-811.72, relating to Choices services and the participation requirements for persons receiving temporary cash assistance from the Texas Department of Human Services.

The four principles of Texas' vision are: limited and efficient state government, local control, personal responsibility, and support for strong families (House Bill 1863, 74th Texas Legislature, 1995, as amended and codified in selected statutes including the Texas Labor Code, Chapters 301 and 302). The One-Stop Service Delivery Network rules, which are based on the four principles of Texas' vision, set forth the role of a Board in the oversight and management of Choices services as part of the maintenance and continuous improvement of the One-Stop Service Delivery Network as established in Texas Government Code, Chapter 2308, and Texas Labor Code, Chapters 301 and 302, and 40 TAC Chapter 801, Subchapter B. The One-Stop Service Delivery Network rules are also designed to address the four purposes of TANF and the following key principles underlying The Personal Responsibility and Work Opportunity Reconciliation Act, as stated in the April 12, 1999 final TANF regulations at 64 Fed. Reg. 17721:

(1) Welfare reform should help people transition from welfare to work;

(2) Welfare should be a short-term transitional experience, not a way of life;

(3) Parents should receive the assistance necessary to help their families in the transition from welfare to work;

(4) Solutions to poverty and welfare dependency should not be "one-size fits all;" and

(5) Federal and state government should focus less attention on eligibility determinations and place more emphasis on program results.

The four purposes of TANF (42 U.S.C.A. §601(a)), are:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

The goal of Choices services is to end the dependence of needy families on public assistance by promoting job preparation, work and marriage. The Commission intends, to the extent possible, that a Board be provided the flexibility afforded in the final federal TANF regulations and that a Board may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services which is employment and job retention.

In light of these principles and goals, it is the intent of the Commission that TANF recipients, who are required to participate in Choices services, as well as those individuals at risk of becoming dependent on public assistance or who have transitioned off of public assistance be provided Choices and other services available through the One-Stop Service Delivery Network. More specifically, the changes to the Choices rules are proposed to meet the overarching philosophies and goals of Choices services that include the following:

providing Boards with maximum flexibility to address all purposes of TANF, while ensuring that services provided under purposes 3 and 4, as set forth in proposed §811.1, support the primary goal of promoting employment and job retention/career advancement;

clearly stating the responsibilities of Boards in planning for and managing services including setting forth the Boards' responsibilities related to assessment, development of employability plans, and the delivery of services to individuals;

linking individuals with comprehensive services available through the One-Stop Service Delivery Network;

clearly stating client responsibilities;

describing allowable component activities;

improving linkages between employer needs and individuals who participate in Choices services;

continuing the focus on Work First;

addressing the removal of barriers that limit the individual's ability to work or participate;

clarifying the application of good cause; and

emphasizing post-employment services aimed at job retention and career advancement.

Because of the number of format and organizational changes to the Choices rules, these changes are better facilitated by the repeal of the current rules and adoption of new rules. Following is a more detailed explanation of the changes to the rules.

In §811.1, Purpose and Goal, the new language clarifies the Commission's support of the four purposes of TANF and language concerning expenditure of funds to meet and exceed participation rates and sets forth the goals of Choices services.

In §811.2, Definitions, the new language adds definitions for "Applicant" and "former recipient," and defines the terms "temporary assistance" and "temporary cash assistance" and related terms for purposes of consistency and clarity.

In §811.3, General Board Responsibilities, the new language adds a section to distinguish Board responsibilities from participant responsibilities.

In §811.4, Choices Service Strategy, the new language, which was previously addressed in language contained in former §811.17, is changed to incorporate job retention and career advancement services.

In §811.11, Board Responsibilities Regarding Access, the provisions clarify the responsibilities of the Boards relating to Choices services. Many of the provisions relating to existing requirements are merely reorganized in this section.

In §811.12, Applicant Responsibilities, the language references the provisions relating to attendance regarding Workforce Orientation for Applicants.

In §811.13, Recipient Responsibilities, the language references the provisions relating to recipients' requirements.

In §811.14, Good Cause for Recipients, the new language is added to clarify the application of good cause.

New Subchapter C. is added as the location for provisions relating to Choices Services.

In §811.21, General Provisions, language is added to set forth the Choices services and the Boards' responsibility regarding those services.

In §811.22, Assessment, the provisions set forth the general requirements relating to the assessment.

In §811.23, Employability Plan, the new language, which was previously addressed in language contained in former §811.12, adds a section to strengthen the focus on developing an employability plan based on employers' needs in the local labor market. New language is also included to emphasize the identification and removal of circumstances or barriers that limit an individual's ability to work or participate.

In §§811.24 - 811.36, the language sets forth provisions relating to additional Choices services.

New Subchapter D. is added to set forth Restrictions on Choices Services, which includes §811.51.

Subchapter E. is added as the location for rules relating to support services and other initiatives, §§811.61 - 811.67. In §811.61, Board Review, new language is added to require Board review in the appeal process.

Subchapter F. is added as the location for rules relating to Appeals, which includes §§811.71-811.72.

Additional Background regarding Choices services. Rules of the Texas Department of Human Services relating to employment

services, contained in part in 40 TAC Chapter 3, include the following: requirements of applicants of temporary cash assistance to attend workforce orientation sessions and for recipients to participate in employment services; the exemptions from participation requirements; and financial penalties applied to benefits resulting from noncompliance. Recipients of temporary cash assistance benefits, pursuant to the Personal Responsibility Agreement, are required to work or participate in Choices, the state's TANF employment services program. The Commission, where applicable, cross references those rules for the purposes of continuity or clarity.

Although these rules govern services available through the TANF block grant funds, participants are eligible for and may receive services funded through other resources, including services available under the Welfare-to-Work Formula Grant. Boards have the jurisdiction and the authority to set local policy and determine Choices service delivery strategies and procedures, other One-Stop Service Delivery Network services and activities available in each workforce area, and the locations where services are available and delivered consistent with federal and state regulations, rules, and policies. One such federal requirement is that the funding for WIA services should be utilized only after other funding sources, including Choices funds, are exhausted.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

there are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule;

there are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

there are anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated or required to do anything by the rule.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of the proposed amendment. The result of the rules should be improved education and employment opportunities throughout Texas for persons at risk of becoming dependent on public assistance as well as improved resources of skilled workers from which employers may benefit.

Barbara Cigainero, Director of Workforce Development, has determined that the public benefit anticipated as a result of the rules as proposed will be the clarify and improve the state and local partnership in policy making and service delivery that will ensure that recipients of temporary cash assistance receive services to aid them in assuming their responsibility to move quickly into work or work activities leading to self-sufficiency.

Comments on the proposed rules may be submitted to Barbara Cigainero, Director of Workforce Development, Texas Workforce Commission, 101 East 15th Street, Room 504-T, Austin, Texas 78778; Fax Number (512) 463-2209; E-mail to Barbara.Cigainero@twc.state.tx.us.

Comments must be received by the Commission no later than thirty days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §811.1, §811.2

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

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.1. Goal and Purpose.

§811.2. 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 December 4, 2000.

TRD-200008429
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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40 TAC §§811.1-811.4

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.1. Purpose and Goal.

(a) The purposes of Temporary Assistance to Needy Families (TANF), as outlined in Title IV, Social Security Act, §401 (42 U.S.C.A. §601) are:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

(b) The goal of Choices services is to end the dependence of needy parents on public assistance by promoting job preparation, work, and marriage. Boards are also provided the flexibility and may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services, which is employment and job retention.

§811.2. Definitions.

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

(1) Applicant -- A person who applies for temporary cash assistance.

(2) Earned Income Deduction (EID) -- For purposes of this chapter, Earned Income Deduction is defined as a standard work-related and income deduction that is available through the Texas Department of Human Services (DHS) for four months to all recipients who obtain employment.

(A) Recipients who are employed less than 30 hours a week and earn less than $700 a month, and are not otherwise exempt, shall be required to participate in Choices services.

(B) Recipients who elect the Earned Income Deduction and are employed at least 30 hours a week and earn at least $700 per month shall be required to report hours of work.

(C) Two-Parent recipients who elect the Earned Income Deduction and are employed at least 30 but less than 35 hours a week shall be required to participate in additional Choices services to meet the federal 35-hour requirement.

(3) Former recipient -- A person who is an adult or teen head of household who no longer receives temporary cash assistance.

(4) Individual -- A person who is an applicant, recipient, or former recipient as defined in this section.

(5) Recipient -- A person who is an adult or teen head of household who receives temporary cash assistance.

(6) Temporary assistance -- As defined in 45 C.F.R. §260.31, includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs for items such as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. Temporary assistance, which is funded through TANF:

(A) includes support services such as transportation and child care that are provided to families for up to four months if the family is not employed;

(B) includes other types of benefits and services in support of the TANF purpose one goal at 45 C.F.R. 260.20(a) that provides assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; and

(C) does not include those items listed in 45 C.F.R. 260.31(b) such as non-recurrent, short-term benefits that are designed to deal with a specific crisis situation or episode of need, and are not intended to meet recurrent or ongoing needs.

(7) Temporary cash assistance -- The cash grant provided through DHS to individuals who meet certain residency, income, and resource criteria as provided for under state and federal statutes and regulations, including the Personal Responsibility and Work Opportunity Reconciliation Act, the TANF block grant statutes, the TANF State Plan, and other related regulations.

(8) Work-Based Services -- Includes those services defined in Human Resources Code 31.0126.

§811.3. General Board Responsibilities.

(a) Role of Boards. A Board shall, as authorized by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended, the applicable federal regulations at 45 C.F.R. Part 260 - 265, the TANF State Plan, this chapter, and consistent with the Board's Choices service strategy and the Board's approved integrated workforce training and services plan as referenced in §801.17 of this title, identify employers' workforce needs and design Choices services to ensure that applicants, recipients, and former recipients participate in work-related activities that meet the needs of the local employers and are consistent with the goals and purposes of Choices services as referenced in §811.1 of this title.

(b) Board Flexibility. Subject to the authorization referenced in subsection (a) of this section, a Board may exercise flexibility in the use of TANF funds for services to applicants, recipients, and former recipients to end the dependence of needy persons on government benefits by promoting job preparation, work, and marriage to fulfill TANF purpose two as referenced in §811.1 of this title.

(c) Board planning. A Board shall develop, amend and modify its integrated workforce training and services plan to incorporate and coordinate the design and management of the delivery of Choices services with the delivery of other workforce employment, training and educational services identified in Texas Government Code §2308.251 et seq., as well as other training and services included in the One-Stop Service Delivery Network as set forth in Chapter 801 of this title.

(d) Board management. Pursuant to the rules contained in Chapter 801 and this chapter, a Board shall coordinate workforce training and services for the Board's workforce area and shall incorporate and coordinate the management and strategy for Choices services as provided in §811.4 of this title, into the comprehensive One-Stop Service Delivery Network provided to help low-income families as they move toward self-sufficiency.

§811.4. Choices Service Strategy.

(a) A Board shall conduct a strategic planning process that includes an analysis of the local labor market to determine employers' needs, emerging occupations, and demand occupations; and identify employers who will support employment with a goal of career advancement for individuals.

(b) A Board shall set local policies for a Choices service strategy that coordinates various service delivery approaches to:

(1) assist applicants in gaining employment as an alternative to public assistance;

(2) utilize a Work First strategy to provide recipients access to the labor market; and

(3) assist former recipients in job retention and career advancement to remain independent of temporary cash assistance.

(c) The Choices service strategy shall include:

(1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce. As part of the orientation, a Board

must provide applicants with an appointment for the employment planning session that the individual is required to attend if the individual is subsequently certified as eligible for temporary cash assistance. A Board shall ensure that the applicants are informed of:

(A) the impact of time-limited benefits, the advantages of working, individual and parental responsibilities;

(B) the services available through Choices;

(C) other services and activities available through the One-Stop Service Delivery Network; and

(D) the consequences for noncompliance.

(2) Work First.

(A) Work First provides individuals with access to the labor market before or immediately after certification for temporary cash assistance.

(B) A Board must establish written policy guidelines that provide a period of assisted job search and job readiness activities that are consistent with state-established guidelines. Individuals who do not obtain employment during this timeframe are placed in work-based services and education or training activities as identified in the individual's employability plan.

(C) Boards shall ensure that the individual assessment and the individual's time limits for temporary cash assistance are considered when planning services.

(3) Job Retention, Career Advancement, and Re-Employment Services.

(A) A Board shall ensure that the Choices service strategy provides services for current recipients who are employed or former recipients to support job retention, independence from temporary cash assistance, and progress towards self-sufficiency with a goal of career advancement.

(B) Post-employment services include skills upgrade, work-related incentives, education and training, transportation, child care, and other supportive services. Post-employment service providers may include, among others, community colleges, technical colleges, proprietary schools, faith-based organizations, and community based organizations.

(4) Adult Services. Services for adults focus on activities individually designed to lead to employment and self-sufficiency as quickly as possible.

(5) Teen Services. Services for teenaged individuals focus on completion of school, graduating or obtaining a high school equivalency certificate, and making the transition from school to work.

(6) Local Flexibility. A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery Network.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008422

J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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SUBCHAPTER B. ELIGIBILITY AND PARTICIPATION

40 TAC §§811.11-811.20

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

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.11. Eligibility.
§811.12. Participation Requirements.
§811.13. Good Cause.
§811.14. Penalties for Failure to Participate.
§811.15. Access to Choices Services.
§811.16. Assessment.
§811.17. Choices Service Strategies.
§811.18. Monitoring of Participation.
§811.19. Individual Development Accounts.
§811.20. Employment Retention and Re-employment 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.

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008428
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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SUBCHAPTER B. ACCESS TO CHOICES SERVICES

40 TAC §§811.11-811.14

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§ 811.11. Board Responsibilities Regarding Access.

(a) A Board shall ensure that Choices services are provided to applicants for temporary cash assistance who attend Workforce Orientation for Applicants.

(b) A Board shall ensure that recipient status is verified monthly and recipients either:

(1) comply with Choices services requirements as outlined in the employability plan unless the individual is exempted by DHS; or

(2) have good cause as described in §811.14 of this title (relating to Good Cause for Recipients).

(c) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to recipients, including those receiving EID, and former recipients.

(d) A Board shall ensure that the monitoring of program requirements and participant activity is ongoing and frequent, as determined appropriate by the Board, and consists of the following:

(1) tracking and reporting hours of participation;

(2) tracking and reporting of supportive services;

(3) determining and arranging for any intervention needed to assist the individual in complying with Choices service requirements;

(4) ensuring that the individual is progressing toward achieving the goals and objectives in the employability plan; and

(5) monitoring all other participation requirements.

(e) A Board shall:

(1) verify that an applicant attends Workforce Orientation for Applicants, in accordance with DHS rule, 40 T.A.C. §3.7301 ; or

(2) notify DHS if a recipient fails to comply with Choices services requirements.

§811.12. Applicant Responsibilities.

Applicants are required to attend a scheduled Workforce Orientation for Applicants, in accordance with DHS rule 40 T.A.C. §3.7301.

§811.13. Recipient Responsibilities.

Recipients are required to:

(1) attend scheduled appointments;

(2) participate in or receive ancillary services necessary to enable the individual to participate in employment or in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;

(3) accept a job offer;

(4) participate in assessment and employment planning appointments and assigned employment and training activities for the required number of hours per week as required by 42 U.S.C.A. §607 or as designated in an individual's employability plan in which compliance is based on the assigned number of hours designated in the employability plan, even if greater than the federal minimum expectation; and

(5) report component activity hours, including hours of employment.

§811.14. Good Cause for Recipients.

(a) Good cause. Good cause only applies to recipients. A Board shall ensure whether the recipient has good cause as provided in this chapter.

(b) Determinations of good cause. A Board shall ensure that a good cause determination:

(1) is based on the individual circumstances of the recipient;

(2) is based on face-to-face or telephone contact with the recipient;

(3) covers a temporary period when an individual may be unable to attend scheduled appointments or participate in ongoing work activities;

(4) is made at the time of occurrence; and

(5) is conditional upon efforts to enable the individual to address circumstances that limit the ability to participate in Choices services as required in the Personal Responsibility Agreement.

(6) shall not extend beyond three months unless a re-evaluation of the situation shows that the circumstance precluding participation is not resolved after all available resources to remedy the situation have been explored.

(c) Reasons for good cause. One or more of the following may constitute good cause for purposes of this chapter if the recipient:

(1) is temporarily ill or incapacitated;

(2) is incarcerated or has a court appearance;

(3) is the caretaker of a physically or mentally disabled child who requires the caretaker's presence in the home;

(4) demonstrates that there is no available transportation or there is a breakdown in transportation arrangements;

(5) demonstrates that there is no available child care or there is a breakdown in child care arrangements;

(6) is without other support services necessary for participation;

(7) receives a job referral that results in an offer below the federal minimum wage, except for certain work-related, on-the-job training activities such as work skills training;

(8) demonstrates that there are no available jobs within reasonable commuting distance, which means that travel from home to the job or training would require commuting time of more than two hours round trip, or the distance prohibits walking and transportation is not available; or

(9) is in a family crisis or family circumstance that precludes participation, including being a victim of domestic violence, and the recipient engages in problem resolution through appropriate referrals for counseling and supportive services.

(d) Good cause based on domestic violence. A Board shall ensure that good cause based on domestic violence:

(1) is reevaluated at least every three months; and

(2) does not extend beyond a total of twelve months from the first determination of good cause.

This 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 Decompiler 4, 2000.

TRD-200008421

J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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SUBCHAPTER C. CHOICES SERVICES

40 TAC §§811.21 - 811.37

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.21. General Provisions.

(a) A Board shall ensure that services are available to assist individuals with obtaining employment as quickly as possible and, if employed, with retaining employment. These services may include:

(1) job readiness and job search-related services;

(2) work-based services;

(3) job retention and career advancement services;

(4) education and training services as described in this subchapter; and

(5) support services.

(b) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act.

(c) A Board shall ensure that a placement in work-based services does not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements.

(d) A Board may utilize the Training Provider Certification System (TPCS) and Individual Training Account (ITA) systems as described in 40 T.A.C. Chapter 841 to purchase or pay for training services for individuals participating in Choices activities.

(e) A Board may provide Job Development Services. These services may include outreach activities performed to solicit an employer's acceptance of an individual into an unsubsidized job opening, subsidized employment, on-the-job training position, or other worksite activity.

(f) A Board may provide Job Placement Services. Job Placement services include identification of employers' workforce needs and identification of individuals who have sufficient education and training to be successfully linked with employment.

§811.22. Assessment.

General Requirements. A Board shall ensure that the following minimum initial assessments are performed to determine the employability and retention needs of individuals as set forth in this section.

(1) For applicants, recipients, and former recipients, the assessment shall include evaluation of the individual's strengths and barriers to obtain and retain employment including:

(A) skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;

(B) support services needs; and

(C) family circumstances that may affect participation, including the existence of family violence as one of the factors considered in evaluating an individual's employability.

(2) For recipients, the assessment shall also include evaluation of the individual's:

(A) vocational and educational skills, experiences, and needs; and

(B) literacy level by using a statewide standard literacy assessment instrument. Recipients receiving the EID are excluded from the literacy assessment. A Board shall ensure that the grade-level results are provided to DHS for use in determining the appropriateness of the initial State time limit designation for temporary cash assistance as described in the Texas Human Resources Code Section 31.0065, relating to State time-limited benefits.

§811.23. Employability Plan.

(a) The Board shall ensure that an employability plan, which is developed during the assessment:

(1) is based on an individual and family assessment;

(2) delineates the goal of self-sufficiency through employment based on the needs of the local labor market;

(3) sets out the steps and services set forth in this chapter necessary to achieve the goal, including:

(A) testing the individual's immediate employability in the local labor market;

(B) removing the barriers that limit the individual's ability to work or participate in activities to enable the individual to address their barriers;

(C) arranging support services; and

(D) providing post-employment skill enhancement and career advancement;

(4) is signed by the individual and the Board's designated representative;

(5) assigns required hours and is the participation agreement for compliance with Choices services requirements; and

(6) includes counseling and other support services that address domestic violence, including the removal of circumstances that limit the ability to work or participate for recipients who receive a good cause determination for domestic violence.

(b) A designated representative of the Board shall ensure that an assessment is ongoing, progress towards meeting the goals of the employability plan is evaluated, and the employability plan is modified as appropriate to meet employer needs in the local labor market.

§811.24. Job Readiness Services.

Job readiness services shall provide individual assistance or coordinated, planned, and supervised classes to prepare individuals for seeking employment, and may include the following:

(1) occupational exploration, including information on local emerging and demand occupations;

(2) job skills assessment;

(3) assistance with applications and resumes;

(4) job fairs;

(5) interviewing skills and practice interviews;

(6) life skills; or

(7) guidance and motivation for development of positive work behaviors necessary for the labor market.

§811.25. Job Search Services.

Job search services shall provide individual and group activities in which individuals actively seek employment, and may include the following:

(1) counseling;

(2) job search skills training;

(3) information on available jobs; or

(4) provision of information on the local labor market, including information on emerging and demand occupations.

§811.26. Unsubsidized Employment.

Full or part-time employment, with wages paid in full by the employer.

§811.27. Subsidized Employment.

(a) Enrollment.

(1) Individuals who, after an objective assessment of their skills, are determined to have the basic skills and behaviors necessary to succeed in the workplace may be placed in subsidized employment positions.

(2) Individuals who are unemployed after completing an initial job readiness and job search period may be required to enter into a subsidized employment position based on available resources and the individual's skills, interests, and employability plan.

(b) Wages.

(1) Wages shall be at least minimum wage. All of the wages, or a portion of the wages, may be subsidized, based on local Board policy.

(2) Employers must provide the same wages and benefits to subsidized employees as for unsubsidized employees with similar skills, experience, and position.

§811.28. Internship.

Individuals engaged in internships are in short-term training. A Board may set local policy regarding whether internships are unpaid or paid, and whether the internships are subsidized or unsubsidized.

§811.29. Self-Employment Assistance.

(a) Subject to available resources, the Agency shall, or a Board may, provide for self-employment assistance services for appropriate Choices individuals to enable them to begin or continue a small business. For purposes of this subsection, a small business has ten or fewer employees.

(b) Self-employment assistance may include a microenterprise development program.

(c) Individuals shall be selected for self-employment assistance through an objective assessment process that shall identify individuals who are likely to succeed as business owners.

(d) Self-employment assistance services available to all individuals in Choices shall include:

(1) entrepreneurial training, a required activity for each individual in Choices;

(2) business counseling;

(3) financial assistance; or

(4) technical assistance.

§811.30. On-the-Job Training.

A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for subsidized, time-limited training activities, to assist the individual with obtaining knowledge and skills that are essential to the workplace while in a job setting.

§811.31. Job Skills Training.

(a) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for job skills training.

(b) The job skills training shall be:

(1) directly related to employment; and

(2) be consistent with employment goals identified in the individual's employability plan, when possible.

§811.32. Work Skills Training.

(a) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for unsalaried, work-based training positions in either the private, for-profit, or nonprofit sector or the public sector to improve the employability of an individual who has been unable to find employment.

(b) A Board shall ensure that all individuals who are not exempt from participating in Choices services who are unemployed after completing job search services are evaluated on an individual basis to determine if enrollment in work skills training shall be required, based on available resources and the local labor market.

(c) The Board shall ensure that each work skills training placement:

(1) is time-limited;

(2) is designed to move the individual quickly into regular employment; and

(3) has designated hours, tasks, skill attainment objectives, and staff supervision.

(d) A Board shall ensure that all entities that enter into non-financial agreements with the Board identify training positions and provide job training and work skills training within their organization. These positions shall enable individuals to gain the skills necessary to compete for positions within the entity as well as positions in the labor market.

§811.33. Community Service.

A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for a community service program that provides quality employment activities to individuals through unsalaried, work-based positions in either the private nonprofit sector or the public sector to improve the employability of individuals who have been unable to find employment. A Board is encouraged to use community service programs only in those cases where an individual's need warrants it. These placements are time-limited, and individual positions must be designed to move individuals quickly into regular employment.

§811.34. Vocational Educational Training.

(a) A Board shall determine, on a case-by-case basis, whether to authorize, arrange, or refer individuals for training in vocational job skills or knowledge in specific occupational areas.

(b) The vocational educational training shall:

(1) relate to the types of jobs available in the labor market;

(2) be consistent with employment goals identified in the individual's employability plan, when possible; and

(3) be subject to the time limitations as detailed in §811.41.

§811.35. Parenting Skills Training.

A Board shall determine, on a case-by-case basis, whether to authorize, arrange, or refer individuals for parenting skills training including one or more of the following: nutrition education, budgeting and life skills, and instruction on the necessity of physical and emotional safety for children.

§811.36. Educational Services.

A Board shall determine, on a case-by-case basis, whether to authorize, arrange, or refer individuals for the following educational or other training services:

(1) secondary school leading to a high school diploma, satisfactory attendance at a secondary school, or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate;

(2) basic skills and literacy;

(3) English proficiency; or

(4) postsecondary education, intended to lead to a degree or certificate awarded by a training facility, proprietary school, or other educational institution that prepares individuals for employment in current and emerging occupations that do not require a baccalaureate or advanced degree. On an individual basis, completion of self-initiated education currently in progress at the associates, baccalaureate, or advanced degree level may be approved within the twelve-month time frame, subject to the time limitations as detailed in §811.41.

§811.37. Job Retention, Career Advancement, and Re-employment Services.

(a) A Board shall ensure that job retention, career advancement, and re-employment services are offered to current recipients who are employed and applicant and former recipients who have obtained employment but require additional assistance in retaining employment and achieving self-sufficiency.

(b) A Board shall monitor job retention, and ensure that hours of employment are required and reported by individuals for at least the length of time the individual receives temporary cash assistance.

(c) Recipients who elect to receive the Earned Income Deduction through DHS and are required to participate in employment services must report hours of work for a four-month period to the Board.

(d) A Board shall, through local policy and procedures, establish follow-up methods and time frames that shall occur no less often than monthly.

(e) A Board may provide job retention, career advancement, and re-employment services to individuals who are denied temporary cash assistance due to earnings. The job retention, career advancement, and re-employment services for former recipients may include the following:

(1) assistance and support for the transition into employment through direct services or referrals to resources available in the workforce area;

(2) child care, if needed, as specified in rules at 40 T.A.C. Chapter 809;

(3) work-related expenses, including those identified in §811.52 of this title (relating to Work-Related Expenses);

(4) transportation, if needed;

(5) job search, job placement, and job development services to help an individual who loses employment find another job; or

(6) referrals to available education and training resources to increase an employed individual's skills or to help the individual qualify for advancement and longer-term employment goals.

(f) The length of time a former recipient may receive services is dependent upon the individual's circumstances and whether the individual is at risk of returning to temporary cash assistance.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008420
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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SUBCHAPTER C. JOB SEARCH-RELATED ACTIVITIES

40 TAC §§811.31-811.34

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

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.31. Job Search-Related Activities.

§811.32. Job Readiness.

§811.33. Job Search.

§811.34. Job Development and Job Placement 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.

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008427
J. Randel (Jerry) Hill
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Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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SUBCHAPTER D. WORK-BASED PROGRAMS

40 TAC §§811.41-811.45

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

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.41. Work-Based Programs.

§811.42. Subsidized Employment.

§811.43. Work Skills Training.

§811.44. Texans Work Program.

§811.45. Self-Employment Assistance.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008426
J. Randel (Jerry) Hill
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Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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SUBCHAPTER D. RESTRICTIONS ON CHOICES SERVICES

40 TAC §811.51

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.51. Restrictions on Lengths of Education and Training.

A Board shall ensure that education and training, for each individual, does not exceed a cumulative total of 12 months. The Board shall also ensure that the education and training is:

(1) either postsecondary or vocational, and

(2) leads to a degree or certificate.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008419
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Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
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SUBCHAPTER E. EDUCATION AND OTHER TRAINING ACTIVITIES

40 TAC §§811.61-811.65

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

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.61. Education and Training Activities.

§811.62. Educational Activities.

§811.63. Vocational and Job Skills Training.

§811.64. On-the-Job Training.

§811.65. Parenting Skills Training.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008425
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Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §§811.61-811.67

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.61. Support Services.

A Board shall ensure that support services as specified in this subchapter shall, if needed, be provided to applicants, recipients, and former recipients to remove barriers to employment or participation in Choices

services, subject to availability of resources and funding. A Board shall ensure that support services provided to applicants, recipients, and former recipients are coordinated with the employer, when appropriate.

§811.62. Child Care for Applicants and Recipients.

(a) A Board shall ensure that child care is provided if needed, as specified in Chapter 809 of this title, including parents' share of child care costs.

(b) Transitional child care is provided as needed, as specified in §809.101 of this title.

(c) Choices child care is provided as needed, as specified in §809.102 of this title.

(d) Applicant child care is provided as needed, as specified in §809.104 of this title.

§811.63. Transportation.

A Board shall ensure that transportation assistance shall:

(1) be provided if needed to enable an applicant, a recipient, and a former recipient to work, attend, and participate in required Choices services, or access necessary support services if alternative transportation resources are not available:

(2) not extend beyond four months for applicants or former recipients who are unemployed and not receiving temporary cash assistance; and

(3) use the most economical means of transportation that meets the individual's needs.

§811.64. Work-Related Expenses.

(a) If other resources are not available, work-related expenses necessary for applicants, recipients, or former recipients to accept or retain specific and verified job offers that pay at least the federal minimum wage may be provided or reimbursed.

(b) A Board shall develop written policies related to the methods and limitations for provision of work-related expenses.

(c) Work-related expenses may include: tools, uniforms, equipment, transportation, car repairs, housing or moving expenses, and the cost of vocationally required examinations or certificates.

§811.65. Wheels to Work.

(a) The Agency may develop a Wheels to Work initiative in which local nonprofit organizations provide automobiles for Choices individuals who have obtained employment but are unable to accept or retain the employment solely because of a lack of transportation.

(b) A Board may assist individuals who verify the need for an automobile to accept or retain employment by referring them to available providers.

(c) Persons or organizations donating automobiles under a Wheels to Work initiative shall receive a charitable donation receipt for federal income tax purposes.

§811.66. General Equivalency Diploma (GED) Testing Payments.

A Board shall ensure that the cost of General Equivalency Diploma (GED) testing and issuance of the certificate are paid through direct payments to the GED test centers and the Texas Education Agency for individuals referred for testing by the Board's provider of Choices services.

§811.67. Individual Development Accounts.

(a) A Board may administer an individual development account (IDA) program under this section using TANF funds in accordance with 45 C.F.R. §§263.20-263.23. An individual development account means an account established by, or for, an eligible individual to allow the individual to accumulate funds for specific purposes.

(b) A Board shall ensure that any individual development accounts created and matched with TANF funds are established and administered through a contract with a private nonprofit entity or through a state or local government entity acting in cooperation with a private nonprofit entity. The private nonprofit entity, or cooperating state or local entity, must coordinate with a financial institution in administering the accounts.

(c) Individuals eligible under this section for individual development accounts are applicants, recipients, and former recipients.

(d) Individual development accounts may be established for an eligible individual, and may be contributed to with the individual's earned income and up to fifty percent of the individual's federal Earned Income Tax Credit refund. Federal Earned Income Tax Credit refunds shall not be matched with TANF funds.

(e) Federal TANF, as well as public or private funds may be used to provide matching funds for qualified expenses and to administer individual development accounts and shall be expended in a manner consistent with applicable federal and state statutes and regulations, with the exception of federal Earned Income Tax Credit refunds.

(f) Use of funds in an individual's IDA, shall be in accordance with the Social Security Act §404(h) (42 U.S.C.A. §604(h)) and 45 C.F.R. §263.20 - 263.23 and limited to expenses related to:

(1) postsecondary educational expenses;

(2) first home purchase; or

(3) business capitalization.

(g) A Board must ensure that only qualified withdrawals are made by eligible individuals, and must develop policies and procedures to address unauthorized withdrawals, to include notification:

(1) to the individual that unauthorized withdrawals may impact the individual's eligibility for public assistance programs;

(2) to the individual of forfeiture of the entitlement to the matching funds for an unauthorized withdrawal; and

(3) to DHS within seven working days of the unauthorized withdrawal.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008418
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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SUBCHAPTER F. APPEALS

40 TAC §811.71, §811.72

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems

necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.71. Board Review.

(a) Individuals against whom an adverse action is taken by a Texas Workforce Center Partner may request a review by the respective Board.

(b) A request for review shall be submitted in writing and delivered to a Board within 15 calendar days of the date of the adverse action. The request shall also contain:

(1) a concise statement of the disputed adverse action;

(2) a recommended resolution; and

(3) any supporting documentation the individual deems relevant to the dispute.

(c) On receipt of a request for review, a Board shall coordinate a review by appropriate Board staff.

(d) The parties to the request for review are the aggrieved applicant or individual and the Texas Workforce Center Partner.

(e) Additional information may be requested from the parties. Such information shall be provided within 15 days of the request.

(f) Within 30 calendar days of the date the request for review is received or of the date that additional requested information is received by the reviewing Board staff member, a Board shall send the parties written notification of the results of the review.

§811.72. Appeals to the Agency.

(a) After results of a review have been issued, the party that disagrees with the outcome of the review may request an Agency hearing to appeal the results of the review.

(b) The request for appeal to the Agency from a Board's review shall be filed in writing with the Appeals Department, Texas Workforce Commission, 101 East 15th Street, Room 410, Austin, Texas 78778-0001, within 15 days after receiving written notification of the results of the review.

(c) The appeal to the Agency shall include a hearing, which is limited to the issues and the information considered in a Board review.

(d) The Agency hearing shall be held in accordance with the procedures applicable to an appeal as contained in Chapter 823 of this title (relating to General Hearings).

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008417
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-3812

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SUBCHAPTER F. SUPPORT SERVICES

40 TAC §§811.81-811.87

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

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.81. Support Services.

§811.82. Child Care.

§811.83. Transitional Child Care.

§811.84. Transportation.

§811.85. Work-related Expenses.

§811.86. Wheels for Work.

§811.87. GED Testing Payments.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008424
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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SUBCHAPTER G. APPEALS

40 TAC §811.101

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

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.101. Fair Hearings or Appeals.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008423
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

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CHAPTER 835. SELF-SUFFICIENCY FUND
SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SELF-SUFFICIENCY FUND

40 TAC §835.2

The Texas Workforce Commission proposes an amendment to Chapter 835 Subchapter A General Provisions Regarding the Self-Sufficiency Fund §835.2 relating to Self-Sufficiency Fund Definitions.

The purpose of the amendment is to clarify the definition of a food stamp household and remove the definitions of self-sufficiency and TANF recipient. While eligibility for Self-Sufficiency Fund services is open to TANF recipients as well as individuals who are at risk of becoming dependent on public assistance, the first priority of the Self-Sufficiency Fund is to assist current adult TANF recipients in obtaining the education and skills necessary to enter employment and become independent of public assistance. The Commission intends that the Self-Sufficiency Fund should be available to help low income families with children avoid the risk of becoming dependent on public assistance, as well as assist in making the transition from public assistance into the workforce. In addition, the existing process to determine the eligibility of families with children receiving food stamps may be used to determine eligibility for Self-Sufficiency services. The Commission believes that a statewide definition for individuals at risk is important for consistency and efficiency and that it is the Commission's responsibility to interpret the statute in light of the legislative intent to set the foundation for implementation of the Self-Sufficiency Fund.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

there are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule; there are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

there are anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated or required to do anything by the rule.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of the proposed amendment. The result of the rules should be improved education and employment opportunities throughout Texas for persons at risk of becoming dependent on public assistance as well as improved resources of skilled workers from which employers may benefit.

Barbara Cigainero, Director of Workforce Development, has determined that the public benefit anticipated as a result of the rules as proposed will be the clarify and improve the state and local partnership in policy making and service delivery that will ensure that recipients of temporary cash assistance receive services to aid them in assuming their responsibility to move quickly into work or work activities leading to self-sufficiency.

Comments on the proposed rules may be submitted to Barbara Cigainero, Director of Workforce Development, Texas Workforce Commission, 101 East 15th Street, Room 504-T, Austin, Texas 78778; Fax Number 512-463-2209; E-mail to Barbara.Cigainero@twc.state.tx.us.

Comments must be received by the Commission no later than thirty days from the date this proposal is published in the *Texas Register*.

The rule is proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rule affects Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

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

(1) Commission--The Texas Workforce Commission or an employee or employees designated by the Director to administer the Self- Sufficiency Fund.

(2) Community-based organization (CBO)--A private nonprofit organization that is representative of a community or a significant segment of a community and that provides education, vocational education or rehabilitation, job training, or internship services or programs. The term includes a neighborhood group or corporation, union-related organization, employer-related organization, faith-based organization, tribal government, or organization serving Native Americans. The CBO must be certified as a 501(c)(3) nonprofit organization under the IRS Code of 1986, as amended. A CBO providing services, which are regulated by the state, must provide evidence of required certification, license or registration.

(3) Customized job training project--A project designed by a prospective private partner or trade union in partnership with a public community or technical college, extension service, or community-based organization for the purpose of providing specialized workforce training to prospective employees of the prospective private partner or members of the trade union with the intent of expanding the workforce.

(4) Director--The Executive Director of the Texas Workforce Commission or the Executive Director's designee.

(5) Extension service--A higher education agency and service established by the Board of Regents of the Texas A&M University System.

(6) Grant recipient--A public community or technical college, community-based organization, or the extension service awarded a grant from the Self-Sufficiency Fund.

(7) Individual at risk of becoming dependent on public assistance -- An individual who is a member of a food stamp household with dependent children.

(8) Local Workforce Development Board (Board)--A Local Workforce Development Board as created under the Workforce and Competitiveness Act and certified by the Governor as provided for in Texas Government Code, § 2308.261. In a Local Workforce Development Area for which a Board has not been certified, the Commission or an entity operating a career center in that area may assume the responsibilities of a Board under this chapter.

(9) Prospective private partner--A person, sole proprietorship, partnership, corporation, association, consortium, or private organization which submits a joint proposal for a customized job training project in partnership with a public community or technical college, a community-based organization, or extension service.

(10) Public community college--A state funded two-year educational institution primarily serving its local taxing district and service area in Texas and offering vocational, technical and academic courses for certification or associate degrees.

(11) Public technical college--A state funded coeducational institution of higher education offering courses of study in vocational and technical education, for certification or associate degrees.

(12) Self-Sufficiency--Employment with wages reasonably calculated to make the employee independent of financial assistance under Texas Human Resources Code, Chapters 31 and 33.

(13) TANF recipient--A person who receives financial assistance under Texas Human Resources Code, Chapter 31.

(14) Trade union--An organization, agency or employee committee, in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

(15) Training provider--A public community or technical college, community-based organization, or extension service which provides training.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

TRD-200008416
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 14, 2001
For further information, please call: (512) 463-8812

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER B. REGISTRATION

22 TAC §1.27

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §1.27 which appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9807).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008302
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
For further information, please call: (512) 305-8535

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SUBCHAPTER C. EXAMINATIONS

22 TAC §1.48

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §1.48 which appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9807).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008303
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
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22 TAC §1.49

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §1.49 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10082).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008304
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
For further information, please call: (512) 305-8535

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.72

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §1.72 which appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9808).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008305
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
For further information, please call: (512) 305-8535

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §§1.141-1.150

The Texas Board of Architectural Examiners has withdrawn from consideration the proposed repeal of §§1.141-1.150 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10086).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008307
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
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22 TAC §§1.141-1.152

The Texas Board of Architectural Examiners has withdrawn from consideration the proposed new §§1.141-1.152 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10087).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008306
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Effective date: November 29, 2000
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CHAPTER 3. LANDSCAPE ARCHITECTS

SUBCHAPTER B. REGISTRATION

22 TAC §3.27

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §3.27 which appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9809).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008308
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Effective date: November 29, 2000
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SUBCHAPTER C. WRITTEN EXAMINATIONS

22 TAC §3.48

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §3.48 which appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9810).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008309
Cathy L. Hendricks, ASID/IIDA
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Texas Board of Architectural Examiners
Effective date: November 29, 2000
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22 TAC §3.49

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §3.49 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10092).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008310
Cathy L. Hendricks, ASID/IIDA
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Texas Board of Architectural Examiners
Effective date: November 29, 2000
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22 TAC §3.50

The Texas Board of Architectural Examiners has withdrawn from consideration the proposed repeal of §3.50 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10092).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008311
Cathy L. Hendricks, ASID/IIDA
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Effective date: November 29, 2000
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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.72

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §3.72 which appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9810).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008312
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
For further information, please call: (512) 305-8535

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §§3.141-3.150

The Texas Board of Architectural Examiners has withdrawn from consideration the proposed repeal of §§3.141-3.150 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10095).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008314
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
For further information, please call: (512) 305-8535

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22 TAC §§3.141-3.151

The Texas Board of Architectural Examiners has withdrawn from consideration the proposed new §§3.141-3.151 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10096).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008313
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
For further information, please call: (512) 305-8535

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CHAPTER 5. INTERIOR DESIGNERS

SUBCHAPTER B. REGISTRATION

22 TAC §5.37

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §5.37 which appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9812).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008315
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
For further information, please call: (512) 305-8535

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SUBCHAPTER C. EXAMINATIONS

22 TAC §5.58

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §5.58 which appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9813).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008316
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
For further information, please call: (512) 305-8535

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22 TAC §5.59

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §5.59 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10100).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008317
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §5.60

The Texas Board of Architectural Examiners has withdrawn from consideration the proposed repeal of §5.60 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10101).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008318
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2000
For further information, please call: (512) 305-8535

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.82

The Texas Board of Architectural Examiners has withdrawn from consideration proposed amendments to §5.82 which appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9813).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008319
Cathy L. Hendricks, ASID/IIDA
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Texas Board of Architectural Examiners
Effective date: November 29, 2000
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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §§5.151-5.160

The Texas Board of Architectural Examiners has withdrawn from consideration the proposed repeal of §§5.151-5.160 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10104).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008321
Cathy L. Hendricks, ASID/IIDA
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Texas Board of Architectural Examiners
Effective date: November 29, 2000
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♦ ♦ ♦

22 TAC §5.151-5.161

The Texas Board of Architectural Examiners has withdrawn from consideration the proposed new §§5.151-5.161 which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10104).

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008320
Cathy L. Hendricks, ASID/IIDA
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Effective date: November 29, 2000
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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT ON MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 419. MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER L. MEDICAID REHABILITATION SERVICES

25 TAC §419.462

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Mental Health and Mental Retardation has been automatically withdrawn. The amended section as proposed appeared in the May 12, 2000 issue of the *Texas Register* (25 TexReg 4274).

Filed with the Office of the Secretary of State on December 1, 2000.

TRD-200008375

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TITLE 28. INSURANCE

PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 134. GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER G. TREATMENTS AND SERVICES REQUIRING PRE-AUTHORIZATION

28 TAC §§134.601-134.606

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new sections, submitted by the Texas Workers' Compensation Commission have been automatically withdrawn. The new sections as proposed appeared in the May 12, 2000 issue of the *Texas Register* (25 TexReg 4276).

Filed with the Office of the Secretary of State on December 1, 2000.

TRD-200008376

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

SUBCHAPTER B. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §§321.34, 321.35, 321.48

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended sections, submitted by the Texas Natural Resource Conservation Commission have been automatically withdrawn. The amended sections as proposed appeared in the May 19, 2000 issue of the *Texas Register* (25 TexReg 4475).

Filed with the Office of the Secretary of State on December 1, 2000.

TRD-200008377

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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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 391. PURCHASE OF GOODS AND SERVICES BY HEALTH AND HUMAN SERVICES AGENCIES

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 391, Purchase of Goods and Services by Health and Human Services; Subchapter A, §§391.1-391.3, 391.21, 391.22, 391.31, 391.35, 391.36, General; Subchapter B, §§391.51, 391.53, 391.55, 391.57, Responsibilities of the Health and Human Services Commission; Subchapter C, §391.71, Responsibilities of health and human services agencies; Subchapter D, §§391.101, 391.103, 391.105, 391.107, 391.109, 391.121, 391.131, 391.141, 391.151, 391.161, 391.165, 391.171, 391.181, 391.183, Purchase of goods and services; Subchapter E, §§391.201, 391.203, 391.205, 391.211, 391.215, 391.217, 391.221, 391.223, 391.231, Cooperative purchasing methods; Subchapter J, §391.301, Protest procedures; Subchapter M, §§391.401, 391.411, 391.451, 391.453, 391.551, 391.552, Miscellaneous requirements; and Subchapter S, §§391.701, 391.711, 391.713, 391.715, 391.716, 391.751, 391.752, Recordkeeping and audit requirements. Sections 391.31, 391.53, and 391.105 are adopted with changes to the proposed text as published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 4982). The changes are made in response to public comment received in response to the proposed rules.

The new rules implement subsection (h) of §2155.144, Government Code, entitled "Procurements by Health and Human Services Agencies." Section 2155.144 is an exception to the purchasing authority of the General Services Commission under Chapter 2155, Government Code. Among other things, §2155.144 assigns responsibility to the Health and Human Services Commission to adopt rules to govern purchases of goods and services by health and human services agencies.

HHSC received comments from the Texas Council of Community MHMR Centers, Inc. (the Council).

Comment: The Council commented generally that the rules exceed the Health and Human Services Commission's statutory authority insofar as they purport to exercise direct authority over local mental health/mental retardation authorities. Specifically, the Council observed that the statutes cross-referenced in proposed §391.31(18) do not apply to local mental health/mental retardation authorities. The Council also indicated that, aside from this issue, the proposed rules indirectly affect local mental health/mental retardation authorities that contract with health and human services agencies.

Response: HHSC agrees with the comment to the extent that the proposed rules may reasonably be interpreted to directly regulate the affairs of local mental health/mental retardation authorities. HHSC revises §391.31(16)(D) (defining the term "purchasing entity") and §391.53(a)(4) (relating to the responsibility of HHSC to approve specific purchasing methods of a purchasing entity), to delete the phrase "local agency, local mental health authority, or local mental retardation authority." HHSC believes this change will clarify that chapter 391 does not directly regulate the practices of local mental health/mental retardation authorities except where the rules regulate the practices of health and human services agencies that contract with local mental health/mental retardation authorities.

Comment: The Council commented that the rules are inconsistent in their treatment of grant transactions. Proposed §391.2 states that chapter 391 does not apply to the award of grants. Proposed §392.36(a)(4) states that the award of grants must comply with "these State requirements." The Council also stated that proposed §391.301(e) also applies requirements to grants.

Response: HHSC disagrees with this comment. The comment correctly notes that proposed §391.2 states that chapter 391 does not apply to grant awards. The comment incorrectly states that proposed §391.36 and §391.301 apply requirements to grants. To the contrary, the latter two provisions direct purchasing entities to other laws or policies for guidance. For example, §391.36(b) states that the transactions specified in subsection (a) of the rule must be conducted in accordance with state laws that govern the specific transactions. The rule otherwise does not subject grant transactions to the requirements of chapter 391. Similarly, §391.301(e) requires protests of awards of grants to be conducted in accordance with the purchasing entity's policies. The rules impose no requirement regarding the conduct of grant award protests. HHSC believes no change in the rules is necessary to address this comment.

Comment: The Council also commented that proposed §391.105 is ambiguous because it refers to standards that do not appear in the referenced subchapter D.

Response: HHSC agrees with this comment. Section 391.105 was intended to refer to procurement standards other than those that govern competitive bidding under §391.141, negotiated

procurements under §391.151, and the cooperative purchasing arrangements under subchapter E of chapter 391. Section 391.105 is revised to refer to §§391.165, 391.171, and 391.183 of the rules.

Comment: The Council observed that the requirements of chapter 391 will apply to the Texas Department of Mental Health and Mental Retardation and other state health and human services agencies with which local community mental health/mental retardation centers may contract. The Council recommended that the proposed rules state clear expectations for health and human services agencies regarding compliance with other state laws and requirements, including the Uniform Grant Management Standards, Historically Underutilized Business requirements, and General Services Commission requirements. The Council noted that proposed §391.103(5) authorizes noncompetitive procurements for purchases of less than $5000, while proposed §391.165(b) permits a purchasing entity to establish a dollar threshold for formal and informal procurements. The Council asked how these provisions relate to the Uniform Grant Management Standards adopted by the Office of the Governor, chapter 2155 of the Government Code, and rules of the General Services Commission, each of which prescribe different dollar thresholds.

Response: HHSC appreciates this comment. As an initial matter, the enabling legislation for chapter 391, §2155.144, Government Code, is codified in subchapter C of chapter 2155 as an exception to the purchasing authority of the General Services Commission under chapter 2155, subchapters A and B. Subsection (n) of §2155.144 states that the section prevails to the extent of any conflict with any other state law that relates to the procurement of goods and services other than laws relating to contracting with historically underutilized businesses or to the procurement of goods and services from persons with disabilities. Accordingly, the requirements established by the General Services Commission for purchases regulated under subchapter A and B, other than rules and standards relating to historically underutilized businesses, are inapplicable to purchases conducted under §2155.144 and the proposed rules.

HHSC has attempted, in §§391.2, 391.35, and 391.36, to clarify the scope and applicability of chapter 391. For example, §391.2 provides that chapter 391 does not govern the award of grants. This is reaffirmed in §391.36, but subsection (b) of the section permits a purchasing entity in its discretion to use the procedures described in chapter 391 in making awards of grants, provided the chapter 391 procedures do not conflict with the governing state or federal laws. Consequently, where the Uniform Grant Management Standards prescribe different requirements for the award of grants by a state agency, the agency must comply with the Uniform Grant Management Standards. In light of these provisions of the rules, HHSC believes no change is required in response to this comment.

Comment: The Council also requested guidance regarding the management of subcontract relationships in a "network" environment, where a contractor or other entity contracts for services by enrolling willing and qualified providers to offer services to third parties, such as clients of the program operated by the contracting agency.

Response: HHSC agrees that contractual relationships in network or multiple-enrollment environments would benefit from clear and consistent standards and guidance regarding contractor and subcontractor performance expectations and responsibility. Subsection (h) of §2155.144 authorizes HHSC to adopt rules to govern the "acquisition" of goods and services under the section. Chapter 391 is intended to implement this instruction. HHSC believes that the management of subcontracts exceeds this instruction. However, HHSC will examine this issue in relation to its development of a contract management handbook for health and human services agencies under subsection (j) of §2155.144.

SUBCHAPTER A. GENERAL

1 TAC §§391.1-391.3, 391.21, 391.22, 391.31, 391.35, 391.36

Statutory Authority

The new rules are adopted under §2155.144(h), Government Code, which authorizes the commission to adopt rules to govern purchases of goods and services by health and human services agencies and other entities under the section; §531.033, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code; and §531.0055(c), which directs the commissioner to implement the duties assigned to the Health and Human Services Commission under §2155.144.

The adopted rules implement §2155.144, Government Code, concerning procurements by health and human services agencies.

§391.31. Definitions.

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

(1) "Applicant" means a person or organization that applies for a contract or grant from a purchasing entity.

(2) "Best value" means the optimum combination of economy and quality that is the result of fair, efficient, and practical procurement decision-making and which achieves health and human services procurement objectives.

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

(4) "Competition" means a contract or purchasing action in which two or more qualified or responsible vendors, acting independently, may be solicited to supply goods or services on acceptable terms and under a procedure that allows the contemporaneous and comparative evaluation of bids, proposals, offers, quotes, or other suitable expressions of interest by a vendor.

(5) "Contract" means a written agreement to purchase goods and/or services between a purchasing entity and a vendor or supplier.

(6) "Contractor" means an individual, firm, or entity that contracts with a health and human services agency to provide goods and/or services.

(7) "Disproportionate share hospital" means a public or private hospital that participates in the Texas Medical Assistance (Medicaid) program and is eligible for additional reimbursement from the disproportionate share hospital fund because it meets the conditions of participation and serves a disproportionate share of low-income patients.

(8) "Enrollment" means the contracting, on a competitive or noncompetitive basis, of vendors or suppliers that meet qualifications or criteria for participation specified by the purchasing entity and agree to provide the contracted goods and/or services in accordance with terms and conditions specified by the purchasing entity.

(9) "Factors other than price and meeting specifications" means evaluation criteria used by a health and human services agency that are in addition to the price of the good or service or specification requirements.

(10) "Goods" means products, merchandise, equipment, supplies, or commodities acquired for consumption, use, or distribution by a health and human services agency other than:

(A) goods within the definition of "automated information system" under chapter 2157, Government Code; or

(B) goods obtained under the Interagency Cooperation Act, chapter 772, Government Code, or Interlocal Cooperation Act, chapter 791, Government Code;

(C) goods used in support of the agency's health care programs and acquired under §2155.144, Government Code (as added by Acts 1997, 75th Leg., ch. 165, §17.01).

(11) "Grant" means an award of assistance in the form of money, property in lieu of money, or other assistance paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with rules, regulations, and guidance provided by the grantor agency.

(12) "Health and human services agency" means a state agency identified in §531.001(4), Government Code.

(13) "Preferred supplier" means a provider of goods or services to whom a health and human services agency is required by state or federal law to provide a preference in the procurement of goods or services (e.g., Texas Department of Criminal Justice Prison Industries products, Texas Industries for the Blind and Handicapped).

(14) "Procurement method" means the business procedure employed by a health and human services agency to acquire goods and services in accordance with this chapter that may include an outright purchase, license, lease-purchase, lease, rental, cost reimbursement, fee-for-service or other method approved by the commission or authorized by law.

(15) "Public hospital" means a hospital owned, leased, or operated by a governmental entity of the state of Texas.

(16) "Purchasing entity" means:

(A) a health and human services agency;

(B) a state agency (other than a health and human services agency), or local unit of government that expends funds received from the Texas Department of Health for the acquisition of goods and services;

(C) a public hospital that is designated a disproportionate share hospital under the State of Texas Title XIX Medical Assistance program (Medicaid); and

(D) a state agency (other than a health and human services agency) that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health or mental retardation services.

(17) "Respondent" means a person or entity that submits an oral, written, or electronic response to a solicitation instrument. For purposes of this chapter, "respondent" is intended to include such phrases as "bidder," "offeror," "proposer," or other similar terminology employed by the purchasing entity to describe the person or entity that responds to a solicitation instrument.

(18) "Services" means the furnishing of skilled or unskilled labor or professional work, but does not include:

(A) a professional service subject to Subchapter A, Chapter 2254, Government Code, or §12.0121, Health & Safety Code;

(B) a service of a state agency employee;

(C) a consulting service or service of a consultant as defined by Subchapter B, Chapter 2254, Government Code;

(D) a service of a public utility;

(E) a service within the definition of "automated information system" under chapter 2157, Government Code;

(F) a service used in support of the agency's health care programs and acquired under §2155.144, Government Code (as added by Acts 1997, 75th Leg., ch. 165, §17.01); or

(G) a service obtained under the Interagency Cooperation Act, chapter 771, Government Code.

(19) "Solicitation instrument" means a written or electronic notification of a purchasing entity's intent to purchase goods or services.

(20) "Specifications" means the written statement or description and enumeration of particulars of goods to be purchased or services to be performed.

(21) "Supplier" means an individual or business entity that supplies goods or services to a purchasing entity under an agreement or contract to provide such goods or services.

(22) "Vendor" means an individual or business entity that is organized for the purpose of offering goods or services for sale, lease, lease-purchase, or contract.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008323
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: December 19, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 424-6576

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SUBCHAPTER B. RESPONSIBILITIES OF THE HEALTH AND HUMAN SERVICES COMMISSION

1 TAC §§391.51, 391.53, 391.55, 391.57

Statutory Authority

The new rules are adopted under §2155.144(h), Government Code, which authorizes the commission to adopt rules to govern purchases of goods and services by health and human services agencies and other entities under the section; §531.033, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531,

Government Code; and §531.0055(c), which directs the commissioner to implement the duties assigned to the Health and Human Services Commission under §2155.144.

The adopted rules implement §2155.144, Government Code, concerning procurements by health and human services agencies.

§391.53. Approval of Purchasing Methods by the Health and Human Services Commission.

(a) Applicability. This section applies to the following purchasing entities:

(1) a health and human services agency other than the Health and Human Services Commission;

(2) a public hospital that is designated a disproportionate share hospital under the State of Texas Title XIX Medical Assistance program (Medicaid);

(3) a state agency, other than a health and human services agency, or local unit of government that expends funds received from the Texas Department of Health for the acquisition of goods and services; and

(4) a state agency, other than a health and human services agency, that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health or mental retardation services.

(b) Commission approval. A purchasing entity to which this section applies must obtain the approval of the commission prior to implementation of purchasing methods that comply with the general standards and procedures prescribed by this chapter. The purchasing entity must provide the commission sufficient information to ascertain the procurement methods of the entity, including copies of applicable rules, policies, and procedures developed by the entity.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008324
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: December 19, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 424-6576

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SUBCHAPTER C. RESPONSIBILITIES OF THE HEALTH AND HUMAN SERVICES AGENCIES

1 TAC §391.71

Statutory Authority

The new rule is adopted under §2155.144(h), Government Code, which authorizes the commission to adopt rules to govern purchases of goods and services by health and human services agencies and other entities under the section; §531.033, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code; and §531.0055(c), which directs the commissioner to implement the duties assigned to the Health and Human Services Commission under §2155.144.

The adopted rule implements §2155.144, Government Code, concerning procurements by health and human services agencies.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008325
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: December 19, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 424-6576

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SUBCHAPTER D. PURCHASE OF GOODS AND SERVICES

1 TAC §§391.101, 391.103, 391.105, 391.107, 391.109, 391.121, 391.131, 391.141, 391.151, 391.161, 391.165, 391.171, 391.181, 391.183

The new rules are adopted under §2155.144(h), Government Code, which authorizes the commission to adopt rules to govern purchases of goods and services by health and human services agencies and other entities under the section; §531.033, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code; and §531.0055(c), which directs the commissioner to implement the duties assigned to the Health and Human Services Commission under §2155.144.

The adopted rules implement §2155.144, Government Code, concerning procurements by health and human services agencies.

§391.105. Alternative Purchasing Methods.

A purchasing entity may purchase goods and services in accordance with an alternative purchasing method authorized under this chapter and conducted in accordance with the standards and requirements described in §§391.165, 391.171, and 391.183 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 November 29, 2000.

TRD-200008326

Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: December 19, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 424-6576

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SUBCHAPTER E. COOPERATIVE PURCHASING METHODS

1 TAC §§391.201, 391.203, 391.205, 391.211, 391.215, 391.217, 391.221, 391.223, 391.231

Statutory Authority

The new rules are adopted under §2155.144(h), Government Code, which authorizes the commission to adopt rules to govern purchases of goods and services by health and human services agencies and other entities under the section; §531.033, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code; and §531.0055(c), which directs the commissioner to implement the duties assigned to the Health and Human Services Commission under §2155.144.

The adopted rules implement §2155.144, Government Code, concerning procurements by health and human services agencies.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008327
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: December 19, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 424-6576

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SUBCHAPTER J. PROTEST PROCEDURES

1 TAC §391.301

Statutory Authority

The new rule is adopted under §2155.144(h), Government Code, which authorizes the commission to adopt rules to govern purchases of goods and services by health and human services agencies and other entities under the section; §531.033, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code; and §531.0055(c), which directs the commissioner to implement the duties assigned to the Health and Human Services Commission under §2155.144.

The adopted rule implements §2155.144, Government Code, concerning procurements by health and human services agencies.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008328
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: December 19, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 424-6576

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SUBCHAPTER M. MISCELLANEOUS REQUIREMENTS

1 TAC §§391.401, 391.411, 391.451, 391.453, 391.551, 391.552

Statutory Authority

The new rules are adopted under §2155.144(h), Government Code, which authorizes the commission to adopt rules to govern purchases of goods and services by health and human services agencies and other entities under the section; §531.033, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code; and §531.0055(c), which directs the commissioner to implement the duties assigned to the Health and Human Services Commission under §2155.144.

The adopted rules implement §2155.144, Government Code, concerning procurements by health and human services agencies.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008329
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: December 19, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 424-6576

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SUBCHAPTER S. RECORDKEEPING AND AUDIT REQUIREMENTS

1 TAC §§391.701, 391.711, 391.713, 391.715, 391.716, 391.751, 391.752

Statutory Authority

The new rules are adopted under §2155.144(h), Government Code, which authorizes the commission to adopt rules to govern purchases of goods and services by health and human services agencies and other entities under the section; §531.033, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code; and §531.0055(c), which directs the commissioner to implement the duties assigned to the Health and Human Services Commission under §2155.144.

The adopted rules implement §2155.144, Government Code, concerning procurements by health and human services agencies.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008330
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: December 19, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 424-6576

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS

The Texas Animal Health Commission (commission) adopts amendments to Chapter 35 concerning the Eradication of Brucellosis and amends Subchapter A, regarding Cattle, Subchapter B, regarding Swine and Subchapter C, regarding Goats. The Commission adopts amendments to §§35.1-35.4 in Subchapter A, §35.42 in Subchapter B, and §35.60 and §35.61 in Subchapter C. A new §35.62 has also been added to Subchapter C. Section 35.1 is adopted with changes to the proposed text as published in the August 18, 2000, issue of the *Texas Register* (25 TexReg 7967). The Commission identified one incorrect term, "coccyges", as found in §35.1(38). That was changed to reflect the correct term, "coccygeal vertebrae". Because that was the only change made in the proposal, only that section will be reprinted. Sections 35.2-35.4, 35.42, and 35.60-35.62 are adopted without changes to the proposed text and will not be republished.

This chapter is amended for reasons provided below. Under §35.1(22) the definition for herds is being amended to include cattle owned by a spouse. This is intended to clarify the existing requirement and insure that brucellosis is not contained in an existing herd owned by a spouse where there is a greater potential for commingling and exposure.

Under §35.1(38) the definition for spayed heifers is amended to specifically reflect United States origin spayed heifers which is the current practice. The Commission is adding a provision for Mexican origin heifers, spayed prior to entry. These animals will be identified as defined in the definition and conform to federal requirements.

Under §35.2(a)(4), the rule is clarified regarding the testing of blood. For all retest purposes, the blood will only be collected by accredited veterinarians that are approved by the Commission to perform brucellosis program duties, or by commission or APHIS personnel.

Under §35.2(l)(4) adopts that following the results of the initial herd test of the herd which contained the reactor(s) or the suspect(s), a regional epidemiologist may waive the requirement for vaccinating cattle over twelve months of age in infected herds. This changes the current requirement of eight months. This change reflects other changes in the rule related to calfhood vaccination age.

Under §35.2(d), under requirements for a herd test, the rule is amended under Subparagraph (B) to clarify that all cattle "that are parturient or post parturient" shall be tested. The reason for inserting this qualification is based on the fact that the characterization of the disease is based on "parturient" and is not based on age at the time of calving.

Under §35.3(d)(2), the rule is amended to correct the incorrect acronym contained in the rules for Brucellosis Milk Surveillance Test (BMST). The rule currently states BRT but is being amended to state BMST.

Section 35.4(a), regarding requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas, is being amended under subparagraph (B) to provide that spayed heifers shall be identified by branding as specified in §35.1 of this title (relating to Definitions). This is to correlate with the addition of the brand requirement for spayed heifers coming from Mexico.

Also, under §35.4(a)(5) which provides for testing requirements for females entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen, is clarified regarding what is needed to release an animal from quarantine.

Under §35.4(7), the section is amended to remove the language which provides that the responsibility for the costs of calfhood testing and retesting shall be borne by the owner. The change reflects the fact that the agency currently performs most of these tests and retests. The reason is, in order to insure timely and accurate testing, agency personnel normally perform this activity. The costs associated with calfhood vaccination shall continue to be borne by the animal owner.

The Commission amends §35.4(b) regarding the requirements for cattle entering Texas from other states. The exception, under paragraph (1)(A), for the vaccination requirements, is that all female cattle entering for purposes of shows, fairs and exhibitions will be "returning to their original location." This is in order to insure that cattle entering for shows, fairs and exhibitions meet our entry requirements by insuring return to their original location. This type of animal provides a reduced animal health risk for this state.

Also, regarding §35.4(b)(2), the testing requirement is amended to clarify that it applies to all non-quarantined cattle "that are parturient or post parturient" animals. The reason is based on the characterization of the disease which is based on "parturient" and is not based on age at the time of calving.

Under §35.4(b), the requirement is clarified to insure that "cattle not from class free states or areas, certified brucellosis free herds, or commuter herds" shall be "S" branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter, accompanied with an "S" permit. The reason for the clarification is to state the requirement which establishes an appropriate method of risk management associated with these types of potentially at risk cattle.

Under §35.4(c)(2), the testing requirement is clarified as being applicable to all cattle changing ownership within Texas that are parturient or post parturient.

The rule is amended at §35.42 in order to indemnify the owner of an animal involved in a brucellosis tested herd where final diagnosis of the animal will be based on tissues. Indemnity is authorized to the owner of livestock because serological samples indicate it is potentially exposed to or infected with brucellosis and the commission considers it necessary to buy the animal for final diagnosis. This is a necessary step toward eradication of the disease.

The Commission adopts changes to Subchapter C which provides for the eradication of brucellosis in goats. As with the brucellosis programs for cattle and cervidae, this program is focused on the control and eradication of brucellosis from livestock in Texas. Recently, *Brucella melitensis* was diagnosed in a goat herd in South Texas. This is the first such outbreak documented in goats in over thirty years. The Commission moved quickly to control and handle this outbreak. *Brucella melitensis* is a particularly serious disease in people and may infect them via consumption of unpasteurized goat milk or through contact during the slaughter process. In order to insure that this disease does not re-establish itself in goats in Texas, the rules are being amended to reflect the current standards for sheep and goats in the brucellosis program established with the cooperative efforts of the United States Department of Agriculture. This program will have the same testing requirements and protocol as provided for cervidae and swine.

Under §35.60, new definitions are being added which reflect the current brucellosis testing protocol for other species.

Section 35.61 is amended to contain, "general requirements" for this subchapter and replaces the "Requirements for Certified Brucellosis Free Herd of Dairy Goats." (The requirements related to a certified brucellosis free herd are being put into a new §35.62.) This section contains requirements related to testing and classification requirements, including procedures for handling affected herds and indemnity options. The Section contains the following subsections: (a) Testing of blood; (b) Classification of goats; (c) Reclassification of reactors; (d) Requirements of a herd test; (e) Procedures in affected herds; and (f) Depopulation with indemnity. Section 35.62 is a new section and is entitled "requirements for Certified Brucellosis Free Herd of Goats." This corresponds to requirements previously contained in §35.61 but with updated requirements which reflect the current brucellosis program. This section contains the following requirements or elements: (a) A certified brucellosis free goat agreement must be completed and signed with the Texas Animal Health Commission; (b) Brucellosis testing will be on a herd basis. Certified free herd status is for a 12-month period; (c) Goats required to be tested--all sexually intact goats are required to be tested at one year of age or older as evidenced by the eruption of their first pair of permanent incisor teeth; (d) Qualifying methods; (e) Qualifying standards; and (f) Proof of qualifying as a certified brucellosis free herd.

No comments were received regarding adoption of the rules.

SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

4 TAC §§35.1-35.4

The amendments are adopted under the Texas Agriculture Code, Chapter 161, §161.041, entitled "Disease Control", and provide that "the commission shall protect all livestock, domestic animals, and domestic fowl from infectious abortion." The commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment. Section 161.046 authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.058, entitled "Compensation of Livestock Owner", provides that the commission may pay an indemnity to the owner of livestock exposed to or infected with a disease if the commission considers it necessary to eradicate the disease. The commission may adopt rules for the implementation of this section.

Also, Chapter 163 of the Agriculture Code provides in §163.064 that the commission may provide rules prescribing criteria for the classification of cattle for the purpose of brucellosis testing. Section 163.087, entitled "Improper Sale Or Use Of Vaccine Or Antigen," provides that "a person commits an offense if the person sells or administers a brucellosis antigen or vaccine in violation of §163.064 of this code." Also, §163.085, entitled "Failure To Properly Handle Infected Animal," provides that "(a) person commits an offense if the person knowingly refuses to handle in accordance with the rules of the commission an animal that the commission has classified as infected with brucellosis."

§35.1. Definitions.

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

(1) Adjacent herds--A herd of cattle or bison that occupies a premise that lies within one mile of a "herd known to be affected."

(2) Affected herd--Any herd in which any cattle have been classified as a reactor or suspect and which has not completed the requirements of the individual herd plan.

(3) Approved brucella vaccine--A product that is produced under license of the USDA and used in accordance with the current guidelines of USDA for its use in cattle to enhance their resistance to brucellosis.

(4) Approved personnel--Texas Animal Health Commission inspectors and veterinarians; Federal Animal Health technicians and veterinarians; accredited Texas veterinarians; and others who have been approved to do those assigned duties as described in these regulations for brucellosis control and eradication.

(5) Auction--A public sale of cattle.

(6) Auctioneer--A person who sells or makes a business of selling cattle at auction.

(7) Brucellosis (Bang's Disease contagious abortion)--For purposes of this regulation, brucellosis is a contagious, infectious disease of cattle, sheep, goats, horses, and swine caused by bacteria of the genus brucella.

(8) Cattle--All dairy and beef animals (genus Bos) and bison (genus Bison).

(9) Class "Free" area--An area of two or more contiguous counties which has remained free from field strain brucella abortus

infection for 12 months or longer. A 12 months adjusted MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050%) must be maintained.

(10) Class "A" area--An area of two or more contiguous counties which has an accumulated 12 months herd infection rate due to field strain brucella abortus that does not exceed 0.25% or 2.5 herds per 1,000 and must maintain a 12 months adjusted MCI reactor prevalence rate not to exceed one reactor per 1,000 cattle tested (0.100%).

(11) Class "B" area--An area of two or more contiguous counties which has an accumulated 12 months herd infection rate due to field strain brucella abortus that does not exceed 1.5% or 15 herds per 1,000. A 12 months adjusted MCI reactor prevalence rate not to exceed three reactors per 1,000 cattle tested (0.30%) must be maintained.

(12) Commission--The Texas Animal Health Commission.

(13) Commission firm--A person, partnership, other legal entity, or corporation which buys and sells cattle as a third party and who reports to the seller and to the buyer details of the transactions. This includes any such person or group whether or not a fee is charged for the service.

(14) Commuter herd--A herd of cattle located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(15) Dealer--

(A) Any person engaged in the business of buying or selling cattle in commerce on his own account, as an employee or agent of the vendor, the purchaser, or both, or on a commission basis.

(B) The term shall not include a person who buys or sells cattle as part of his own bona fide breeding, feeding, dairy, or stocker operations but does include livestock markets and commission merchants.

(16) Designated Pens--A set of pens in a feedlot under a plan of restricted movement, approved jointly by Animal and Plant Health Inspection Service, Veterinary Services, and the Commission in which all cattle are classified as exposed to brucellosis. The pens may be pre-approved, but the approval period will begin with initial arrival of the exposed cattle. The Designation will be automatically renewed every 12 months if requirements specified in these regulations and the approved agreement continue to be met by the feedlot. The status will continue until:

(A) the feedlot requests deactivation; or

(B) the Commission determines the status should be eliminated because of the feedlot's failure to comply with the Designation Agreement or these regulations; or

(C) changes in Federal or State law or regulations require elimination of or change in the status.

(17) Epidemiologist--A veterinarian who has received a degree in epidemiology and is employed by the commission or USDA, APHIS, VS.

(18) Executive director--The chief executive officer of the Texas Animal Health Commission appointed by the commissioners and authorized to act for the commissioners in the absence of the chairman.

(19) Exempt Cattle (from testing requirements)--Cattle that have been physically rendered sterile for breeding.

(20) Exposed cattle--Cattle that are part of an affected herd or cattle that have been in contact with reactors in marketing channels for periods of 24 hours; and periods of less than 24 hours if the reactor has recently aborted, calved, or has a vaginal or uterine discharge. These cattle shall be classified as exposed regardless of any blood test results.

(21) Feedlot--A confined drylot area for finish feeding of cattle on concentrated feed with no facilities for pasturing or grazing. All cattle in a feedlot are considered a "herd" for purposes of these regulations.

(22) Herd--

(A) All cattle under common ownership or supervision or cattle owned by a spouse that are on one premise; or

(B) All cattle under common ownership or supervision or cattle owned by a spouse on two or more premises that are geographically separated, but on which the cattle have been interchanged or where there has been contact among the cattle on the different premises. Contact between cattle on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiological investigation are consistent with the lack of contact between premises; or

(C) All cattle on common premises, such as community pastures or grazing association units, but owned by different persons. Other cattle owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiological investigation establishes that cattle from the affected herd have not had the opportunity for direct or indirect contact with cattle from that specific premises. Quarantined feedlots and quarantined pastures are not considered to be herds.

(23) High risk herd--A herd that is epidemiologically judged by a state-federal veterinarian to have a high probability of having or developing brucellosis. A high risk herd need not be located on the same premise as an infected or adjacent herd.

(24) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(25) Individual herd plan--A herd disease management and testing plan to prevent, control, and eliminate brucellosis in a herd of cattle.

(26) Market cattle identification--The process of individually identifying cattle on change of ownership by backtag or eartag issued by USDA showing their herd of origin.

(27) Official backtag--A United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS) approved identification backtag that conforms to the national uniform tagging system. It uniquely identifies each individual animal with alpha-numeric identification. The official backtag may not be reused on another animal.

(28) Official eartag--A Veterinary Services approved identification eartag (metal, plastic, or other) that conforms to the nine-character alpha-numeric National Uniform Eartagging System. It uniquely identifies each individual animal with no duplication of the alpha-numeric identification, regardless of the materials or colors used. The

term includes the special orange-colored eartag series used to identify calfhood vaccinates. The official eartag may not be removed from the animal.

(29) Official Vaccinate--

(A) Calfhood Vaccinate: Female cattle (dairy and beef) vaccinated between four and 12 months of age with an approved Brucella vaccine.

(B) Adult Vaccinate: Female cattle that have been blood tested negative within ten days prior to vaccination and vaccinated at an age over the ages given in subparagraph (A) of this paragraph with an approved dose of Brucella vaccine as part of a whole herd vaccination plan.

(30) Parturient--Visibly prepared to give birth or within two weeks of giving birth.

(31) Permit--A document adopted by the commission with specified conditions relative to movement, testing and vaccinating of cattle which is required to accompany the cattle entering, leaving or moving within the State of Texas.

(A) "E" permit--Premovement authorization for entry of cattle into the state by the Texas Animal Health Commission. The "E" permit states the conditions under which movement may be made, and restrictions and test requirements after arrival.

(B) "S" permit--A premovement authorization for exposed, suspect or nontested cattle in marketing channels having restricted destination.

(C) "B" permit (VS Form 1-27)--A premovement authorization for movement of reactor cattle in marketing channels moving to slaughter.

(32) Postparturient--Having already given birth.

(33) Premise--An area defined by the outermost boundary of land under common ownership or control enclosed by a perimeter fence or other boundary. A premise may consist of more than one pasture.

(34) Priority Herd--Exposed herd from which a reactor has been classified, infected herd, or adjacent herd.

(35) Quarantined feedlot--A feedlot under a plan of restricted movement, approved jointly by Animal and Plant Health Inspection Service, Veterinary Services and the commission in which all cattle except steers and spayed heifers are classified as exposed to brucellosis.

(36) Quarantined pasture--A designated confined area for limited grazing under a plan of restricted movement approved jointly by Animal and Plant Health Inspection Service, Veterinary Services and the commission. All cattle except steers and spayed heifers shall be classified as exposed to brucellosis. All cattle permitted to a quarantined pasture must originate from a Texas farm or ranch and move directly to a quarantined pasture or through a Texas market to a quarantined pasture.

(37) Reactor--Cattle classified as being infected with brucellosis as a result of serological testing or microbiological culturing of blood, tissue, secretions, or excretions from the animal.

(38) Spayed Heifer--A United States origin heifer which has been neutered by an accredited veterinarian and identified with an official eartag and hot iron brand applied high on the left hip near the tailhead with an open spade design not less than three inches high. The heifer shall be identified on a TAHC Spaying Certificate form completed by an accredited veterinarian or a Texas Animal Health Commission representative. Each spayed heifer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible "M_x" mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry, unless the spayed heifer is imported for slaughter. The "M_x" mark shall be not less than 2 inches nor more than 3 inches high, and shall be applied to each animal's right hip, high on the tailhead (over the junction of the sacral and first coccygeal vertebrae.

Figure: 4 TAC §35.1(38) (No change.)

(39) Suspect--Cattle classified as suspicious of being infected with brucellosis as a result of serological testing of blood, secretions, or excretions from the animal.

(40) Tested herd--Herd of cattle located in a noncertified area for which a state has records showing that the herd has been subjected to official testing for brucellosis in accordance with the procedures for herd tests within 12 months prior to movement and that the herd is not known to be affected with brucellosis.

(41) Test-Eligible Cattle in other than Priority Herds--All cattle 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers.

(42) Test-Eligible Cattle in Priority Herds--All sexually intact female cattle four months of age and older and all bulls 18 months of age and older.

(43) Traceback of reactors--The epidemiological procedure in locating the premise or premises and the cattle that have been in contact with the reactor during a specified period of time.

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 December 4, 2000.

TRD-200008431
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: December 24, 2000
Proposal publication date: August 18, 2000
For further information, please call: (512) 719-0714

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SUBCHAPTER B. ERADICATION OF BRUCELLOSIS IN SWINE

4 TAC §35.42

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041, entitled "Disease Control", and provide that "the commission shall protect all livestock, domestic animals, and domestic fowl from infectious abortion." The commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment. Section 161.046 authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.058, entitled "Compensation of Livestock Owner", provides that the commission may pay an indemnity to the owner of livestock exposed to or infected with a disease if the commission considers it necessary to eradicate the

disease. The commission may adopt rules for the implementation of this section.

Also, Chapter 163 of the Agriculture Code provides in §163.064 that the commission may provide rules prescribing criteria for the classification of cattle for the purpose of brucellosis testing. Section 163.087, entitled "Improper Sale Or Use Of Vaccine Or Antigen," provides that "a person commits an offense if the person sells or administers a brucellosis antigen or vaccine in violation of §163.064 of this code." Also, §163.085, entitled "Failure To Properly Handle Infected Animal," provides that "(a) person commits an offense if the person knowingly refuses to handle in accordance with the rules of the commission an animal that the commission has classified as infected with brucellosis."

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 December 4, 2000.

TRD-200008432
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: December 24, 2000
Proposal publication date: August 18, 2000
For further information, please call: (512) 719-0714

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SUBCHAPTER C. ERADICATION OF BRUCELLOSIS IN GOATS

4 TAC §§35.60-35.62

The amendments and new rule are adopted under the Texas Agriculture Code, Chapter 161, §161.041, entitled "Disease Control", and provide that "the commission shall protect all livestock, domestic animals, and domestic fowl from infectious abortion." The commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment. Section 161.046 authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.058, entitled "Compensation of Livestock Owner", provides that the commission may pay an indemnity to the owner of livestock exposed to or infected with a disease if the commission considers it necessary to eradicate the disease. The commission may adopt rules for the implementation of this section.

Also, Chapter 163 of the Agriculture Code provides in §163.064 that the commission may provide rules prescribing criteria for the classification of cattle for the purpose of brucellosis testing. Section 163.087, entitled "Improper Sale Or Use Of Vaccine Or Antigen," provides that "a person commits an offense if the person sells or administers a brucellosis antigen or vaccine in violation of §163.064 of this code." Also, §163.085, entitled "Failure To Properly Handle Infected Animal," provides that "(a) person commits an offense if the person knowingly refuses to handle in accordance with the rules of the commission an animal that the commission has classified as infected with brucellosis."

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 December 4, 2000.

TRD-200008433
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: December 24, 2000
Proposal publication date: August 18, 2000
For further information, please call: (512) 719-0714

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CHAPTER 43. TUBERCULOSIS

The Texas Animal Health Commission (commission) adopts amendments to Chapter 43, Subchapters A, B, and C, concerning the Eradication of Tuberculosis. Sections 43.2 and 43.12 are adopted without changes to the proposed text as published in the August 18, 2000, issue of the *Texas Register* (25 TexReg 7981) and will not be republished. Section 43.23 is adopted without changes to the proposed text as published in the September 1, 2000, issue of the *Texas Register* (25 TexReg 8539) and will not be republished. This amends Subchapter A, §43.2, which provides interstate movement requirements for cattle, Subchapter B, §43.12, which is requirements for entry into Texas for goats and Subchapter C, §43.23, which is requirements for entry into Texas for cervidae.

The rules are amended to address the tuberculosis conditions that have been verified in the state of Michigan. The Commission recently adopted specific entry requirements for animals coming from all of Michigan in response to the status of the quarantine affecting the whole state. Earlier, the commission had specific entry requirements for cattle and goats coming from a specific quarantine area in Michigan, as designated in the rules. However, as tuberculosis was recently discovered in animals outside of the quarantine zone, the commission recently adopted changes to the rule by requiring a special entry requirement for cattle and goats coming from all other areas in Michigan. This requirement is proposed to be added to reduce the risk of allowing a potentially infected animal to move from Michigan into Texas.

Most recently Michigan has found that tuberculosis is having a persistent impact on Michigan livestock giving the state of Texas heightened concern over animals coming to Texas from Michigan. The Commission is proposing new changes to entry requirements in order to protect cattle and goats as well as to establish new standards for deer from Michigan. These rules propose to affect all cattle, bison, goats and cervidae from Michigan and require that an animal originate from a herd that has been tested, as well as, to require an individual test within sixty days of entry into Texas. Furthermore, the rule is being amended to denote that the quarantine zone will also include any other counties or parts of counties added at a later date.

No comments were received regarding adoption of the rules.

SUBCHAPTER A. CATTLE

4 TAC §43.2

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also, §161.054 authorizes the commission to regulate by rule the movement of animals. This is further

supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state.

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 December 4, 2000.

TRD-200008434
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: December 24, 2000
Proposal publication date: August 18, 2000
For further information, please call: (512) 719-0714

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SUBCHAPTER B. GOATS

4 TAC §43.12

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also, §161.054 authorizes the commission to regulate by rule the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state.

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 December 4, 2000.

TRD-200008435
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: December 24, 2000
Proposal publication date: August 18, 2000
For further information, please call: (512) 719-0714

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SUBCHAPTER C. ERADICATION OF TUBERCULOSIS IN CERVIDAE

4 TAC §43.23

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also, §161.054 authorizes the commission to regulate by rule the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state.

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 December 4, 2000.

TRD-200008436
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: December 24, 2000
Proposal publication date: September 1, 2000
For further information, please call: (512) 719-0714

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CHAPTER 51. INTERSTATE SHOWS AND FAIRS

4 TAC §51.2

The Texas Animal Health Commission adopts an amendment to Chapter 51, concerning Interstate Shows and Fairs. This amends §51.2 which is General Requirements and provides for entry requirements for animals coming into Texas. Section 51.2 is adopted without changes to the proposed text as published in the September 1, 2000, issue of the *Texas Register* (25 TexReg 8540) and will not be republished.

Specifically, the amendment requires that "all nonquarantined livestock or poultry entering Texas from any state, territory, or foreign country shall have a certificate of veterinary inspection," with specific exception. The Commission exempts all cattle entering Texas from brucellosis free states if they are delivered directly to slaughter or consigned to slaughter and accompanied by a waybill. This exemption conforms to exemptions found in other states and there is a very minimal health risk from these animals entering due to their herd of origin as well as by the ultimate destination.

No comments were received regarding adoption the amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture 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 December 4, 2000.

TRD-200008437
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: December 24, 2000
Proposal publication date: September 1, 2000
For further information, please call: (512) 719-0714

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PRACTICE AND PROCEDURE
SUBCHAPTER H. DISCOVERY PROCEDURES

16 TAC §22.144

The Public Utility Commission of Texas (commission) adopts an amendment to §22.144 relating to Requests for Information and Requests for Admission of Facts with no changes to the proposed text as published in the July 7, 2000, *Texas Register* (25 TexReg 6450). The rule will clarify and modernize these discovery procedures. This revised rule was adopted under Project Number 21248.

The commission received comments from AT&T Communications of Texas L.P. (AT&T, Southwestern Bell Telephone Company (SWBT), Reliant Energy HL&P (Reliant), El Paso Electric Company (EPE), Southwestern Public Service Company (SPS), Texas Industrial Energy Consumers (TIEC), Entergy Gulf States, Inc. (EGSI), Central Power and Light, Southwestern Electric Power Company and West Texas Utilities Company, together as the "AEP Companies", TXU Electric Company (TXU), GTE Southwest Incorporated doing business as Verizon Southwest (Verizon), and TXU Telephone Company (TXU Telephone).

In comments, AT&T, Reliant, EPE, SPS, AEP, TXU, Verizon, and TXU Telephone question the need for a detailed index to voluminous materials in §22.144(h)(4), suggesting that such a requirement would add time and expense to the producing party and could lead to additional discovery disputes. These commenters generally oppose the new index provided for in §22.144(h)(4). AT&T urges maintenance of the status quo with regard to voluminous materials in commission proceedings. Reliant, SPS, AEP, and TXU criticized the rule adoption process as failing to provide an opportunity to hold informal workshops to evaluate the index requirement. EGSI proposed an amendment to the rule providing for a five day extension of time for the filing of the index when the responsive documents consists of more than ten documents.

The commission disagrees with the comments of AT&T, Reliant, SPS, AEP, TXU and TXU Telephone concerning the effect of requiring an index to voluminous materials. Inefficiencies caused by disorganized, "box-car" responses to request for information (RFIs) will be eliminated through the requirement of an index. It is a basic and well-established practice for a producing party to maintain a log of materials responsive to discovery requests in complex litigation. Without such an index, inadvertent disclosure of confidential or privileged material could arise. Similarly, such logs or lists of produced documents are used as accountability tools in assuring full and fair production of documents. Also, when making documents available for review in a contested case, the producing party should, as a practical matter, maintain some sort of log, list or index of documents as a monitoring devise to assure proper control over the documents at the site of review. Such a log is typically created in the course of identifying responsive documents maintained in the records of the producing party. The revised rule requires no more than a summary description and identifying information concerning material responsive to a discovery request in those instances in which the material is too voluminous to file under current commission rules. Rather than creating discovery disputes, this requirement will likely avoid discovery disputes by facilitating full and fair examination of available responsive materials in a timely manner. The amendment offered by EGSI raises a valid point concerning the potential need for additional time to create an index to the responsive documents; however, the threshold for permitting any deviation from the index requirement should be on a case by case basis, allowing the parties and the administrative law judge to make any needed exception. The commission declines to adopt EGSI's proposed amendment.

SWBT opposes the requirement of a detailed index provided in §22.144(h)(4), fearing that such a requirement would place an undue burden on producing parties and could lead to abuse of the discovery process. SWBT also opposes the amendment to §22.144(h)(1) that clarifies the requirement that non-voluminous materials be filed and asserts that RFI responses served on the commission are not public information.

The commission disagrees with SWBT. In opposing the index to voluminous materials, SWBT assumes that parties will be driven by a malicious disregard of the discovery process by parties to a contested commission proceeding. There is no basis for such a presumption of malice. Nothing in this adopted rule diminishes the ability of any party to object to improper discovery. The commission disagrees with the arguments advanced by SWBT in opposition to the filing of RFI responses under §22.144(h)(1). SWBT ignores the explicit requirement of §22.71 relating to Filing of Pleadings, Documents and Other Materials that requires the filing of discovery requests and responses. Similarly, the commission disagrees with SWBT's suggestion that RFI responses provided to commission staff are not public information. Such a radical departure from the basic requirements of open government would not create public confidence in the decisions made at the commission. Any RFI response that is not filed under confidential seal is both public information and a state record. For support, SWBT generally refers to unidentified rules of the State Office of Administrative Hearings (SOAH) and the Railroad Commission of Texas (Railroad Commission) as expressly providing that discovery responses not be filed with those agencies. These examples do not support the arguments advanced by SWBT. Typically, the Railroad Commission is not a party to the cases subject to its rules, and would not have a need for the discovery. Similarly, in the case of commission proceedings, there is no need for SOAH to have a duplicate set of the materials filed and made available through the systems established for discovery by the commission.

TIEC generally supports the adoption as published, but would make additional amendments to the rule. Specifically, TIEC seeks the elimination of those rule provisions permitting the withholding of voluminous materials, including §22.144(h)(2), (3) and (4). TIEC believes a better practice is to utilize advanced technology and allow the documents to be made available in electronic form. TIEC also recommends the elimination of §22.144(a)(2) that requires parties to file letters stating that they want to receive copies of all RFI responses.

The commission believes that the modifications of the discovery rule advanced by TIEC should not be made at this time. Elimination of the rules relating to voluminous documents requires a more thorough analysis. The requirement that a party indicate its desire to receive RFI responses is not a burdensome matter.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

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

Filed with the Office of the Secretary of State on November 27, 2000.

TRD-200008219
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 17, 2000
Proposal publication date: July 7, 2000
For further information, please call: (512) 936-7308

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.4

The Public Utility Commission of Texas (commission) adopts an amendment to §26.4 relating to Statement of Nondiscrimination, with changes to the proposed text as published in the August 25, 2000 *Texas Register* (25 TexReg 8120). The amendment implements the provisions of the Public Utility Regulatory Act (PURA) §17.004(a)(4) and §64.004(a)(4), both of which add "income level" and "source of income" as protected categories, and adds a prohibition on "unreasonable discrimination on the basis of geographic location." The amendment is adopted under Project Number 22706.

The commission received comments on the proposed amendment from the Office of the Attorney General (OAG); AT&T Communications of Texas, L.P. and AT&T Wireless Services (collectively AT&T); and Texas Legal Services Center, Texas Ratepayers' Organization to Save Energy, AARP Capital City Task Force for Deregulation of Electricity, and Consumers Union Southwest Regional Office (collectively Texas Consumer Organizations). The commission received reply comments from AT&T

A public hearing on the proposed amendment was held at the commission offices on October 24, 2000 at 9:30 a.m. Representatives from the OAG, AT&T, Southwestern Bell Telephone Company (SWBT), Texas State Telephone Cooperative, Inc. (TSTCI), The Office of Public Utility Counsel (OPC), Sprint Communications Company, L.P. (Sprint), and Smith, Majcher, and Mudge, L.L.P. participated in the public hearing.

After the public hearing, the commission received comments from OPC.

The OAG suggested adding to proposed subsection (b) that a telecommunications provider shall offer services equitably to all customers within its service area. The OAG indicated that this addition would help clarify the meaning of the first clause of the proposed subsection, prohibition on unreasonable discrimination on the basis of geographic location.

AT&T commented that the proposed amendment ignores two specific limitations on the commission's authority. First, the proposed amendment seeks to apply the provisions of PURA §17.004 and §64.004 to all telecommunications providers. The term "telecommunications provider" is defined in PURA §51.002(10) as including wireless telephone service providers. However, the definition in PURA also includes a limitation stating that the term does not include these entities for the purposes of Chapters 17, 55, or 64. AT&T stated that by using the term "telecommunications provider" without qualification, the proposed amendment fails to reflect this limitation on the commission's authority under PURA Chapters 17 and 64. AT&T recommended revising the proposed amendment to indicate it is not applicable to wireless service providers. Second, AT&T stated that the proposed amendment also applies the prohibition on discrimination on the basis of income level and source of income, without appropriate limitation. AT&T stated that both Lifeline and Tel-Assistance services discriminate among customers on the basis of income level or source of income and would be prohibited by a strict enforcement of the proposed rule. AT&T pointed out that PURA §17.004(e) states that nothing in this section shall be construed to abridge the rights of low-income customers to receive benefits through pending or operating programs in effect at the time of the enactment of this chapter. AT&T suggested including similar language in the proposed rule to clarify the scope of the prohibition on discrimination on the basis of income or source of income.

AT&T also sought the commission's clarification that the proposed changes to §26.4 were not intended to implicitly impact other commission rules, such as §26.23 relating to Refusal of Service and §26.24 relating to Credit Requirements and Deposits. AT&T expressed concern that a person could argue that the proposed amendment in this rulemaking also was intended to limit or eliminate a telecommunications utility's ability to utilize lawful and legitimate business procedures used to ensure creditworthiness of applicants and ensure payments may be required for services ordered and used.

Texas Consumer Organizations commented that an effective anti-discrimination rule would do the following: require written policies of the commission's anti-discrimination requirements and internal company procedures to assure compliance, require posting notices of anti-discriminatory requirements, require informing the public of prohibitions against discriminatory conduct, require offering service to all customers in the service territory at the same price, prohibit charging higher deposits based on income source, and collect sufficient data from providers and marketers for the commission to determine if marketing practices are discriminatory or have discriminatory effects. Texas Consumer Organizations stated that the proposed rule fails to meet the task of the Legislature to adopt and enforce rules that would effectively prohibit discrimination. Texas Consumer Organizations indicated that to effectively implement anti-discrimination standards, the commission must do two things. First, the commission must require providers to adopt anti-discrimination policies and train their employees in those policies. Second, the commission must develop objective standards to measure compliance.

In its reply comments, AT&T urged the commission to reject the proposed changes by the OAG and Texas Consumer Organizations. With regard to the OAG recommendation, AT&T stated that the duty created by the statute is plainly stated in the proposed rule and that the recommended language by the OAG is so broad it appears to create an additional duty as well as uncertainty as to what conduct is being proscribed.

AT&T opposed Texas Consumer Organizations' recommendations for the following reasons: they would impose additional regulatory burdens and unnecessary costs on providers, there is no indication that the Legislature intended the detailed and prescriptive rules envisioned by Texas Consumer Organizations, they would have the commission micromanaging the operations of providers, they would not encourage competition, there is no evidence that discrimination is occurring, and there is no indication that the commission's current authority is insufficient to address any discrimination claims.

At the public hearing, SWBT expressed agreement with AT&T's comments and reply comments, with one exception. SWBT indicated that it was not necessary to revise proposed §26.4 to state that the requirements of this section do not apply to wireless providers since the definition of "telecommunications provider" in PURA §51.002(10)(A)(iv) already exempts wireless providers from these provisions.

OPC stated that there may be some ambiguity as to the commission's intent due to the differences between the language in the proposed rule and that used in the relevant statute. OPC indicated that its reading of the proposed rule is that the prohibition on discrimination is not limited to actual buyers of telecommunications services. OPC further stated that a specific change to the proposed rule is not necessary because this issue involves a question of interpretation that may be addressed in the preamble.

The commission adopts proposed §26.4 with one revision. The commission adds subsection (c) to indicate that nothing in this section shall be construed to abridge the rights of low-income customers to receive benefits through pending or operating programs in effect as of May 25, 1999.

The commission does not agree with the AT&T proposal to revise proposed §26.4 to add an exclusion for commercial mobile radio service providers since this exclusion is already contained in the definition of "telecommunications provider" in PURA §51.002(10)(A)(iv). Thus, in the future, any change to the current definition of "telecommunications provider" will not require an amendment to §26.4.

The commission does not agree with the revisions to proposed §26.4 recommended by Texas Consumer Organizations. The purpose of §26.4 is to provide a clear statement of nondiscrimination. Specific requirements related to nondiscrimination in telecommunications are addressed in Project Number 21423, *Rulemaking for Substantive Rules in Subchapter B, Regarding Telephone Customer Service and Protection.*

The commission does not agree with the OAG suggestion, which could be interpreted to create an obligation to serve all customers within a telecommunications provider's service area. A non-dominant certificated telecommunications utility (NCTU) is not required to serve all customers and may develop a niche market as long as it does not violate regulatory requirements.

With regard to AT&T's request for clarification, there is no intent to prevent legitimate nondiscriminatory business procedures for establishing credit and requiring payment for services rendered.

With regard to OPC's comments, the commission believes the intent of §26.4 is clearly stated and that the rule prohibits all illegal discrimination against actual buyers as well as potential buyers of telecommunications services.

In closing, the commission emphasizes that it does not tolerate any unlawful discrimination and will take swift enforcement action against any violator.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, PURA §17.004(b), which grants the commission authority to adopt and enforce rules as necessary or appropriate to implement customer protection standards, and specifically, PURA §17.004(a)(4) and §64.004(a)(4), that require protection from discrimination on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income and from unreasonable discrimination on the basis of geographic location.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004(a)(4), 17.004(b), and 64.004(a)(4).

§26.4. Statement of Nondiscrimination.

(a) No telecommunications provider shall discriminate on the basis of race, nationality, color, religion, sex, marital status, income level, or source of income.

(b) No telecommunications provider shall unreasonably discriminate on the basis of geographic location.

(c) Nothing in this section shall be construed to abridge the rights of low-income customers to receive benefits through pending or operating programs in effect as of May 25, 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 November 27, 2000.

TRD-200008214
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 17, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 936-7308

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SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §26.103

The Public Utility Commission of Texas (commission) adopts new §26.103, relating to Affiliate Guidelines for Certificates of Convenience and Necessity Holders, with no changes to the proposed text that was published in the September 8, 2000, *Texas Register* (25 TexReg 8820). This new section is adopted under Project Number 21164. The new rule implements §54.102 of the Public Utility Regulatory Act (Vernon 1998, Supplement 2000) (PURA) and addresses requirements for a holder of a certificate of convenience and necessity (CCN) and its affiliated telecommunications services providers applying for a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA).

The commission received comments on the proposed new section from the following interested parties: GTE Southwest Incorporated doing business as Verizon Southwest; Southwestern Bell Telephone Company; Texas Telephone Association; Texas Statewide Telephone Cooperative, Inc.; and TXU Communications Telephone Company. All parties supported adoption of the new rule as published and did not request that any specific language changes be made to the rule.

No public hearing on the proposed new section was held under Government Code §2001.029(b) because it was not requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2000) (PURA), §§14.002, 15.023, 54.102, 54.105, 60.164, and 60.165. Section 14.002 provides the commission authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 15.023 grants the commission authority to impose an administrative penalty against an entity for violation of a rule adopted under PURA. Section 54.102 provides the commission authority to enforce structural separation and pricing guidelines for CCN and affiliated COA and SPCOA holders. Section 54.105 grants the commission authority to impose a penalty against a COA holder for violation of a PURA requirement. Section 60.164 limits the commission's authority to adopt any rule or order that would prohibit a local exchange company from jointly marketing or selling its products and services with the products and services of any of its affiliates in any manner permitted by federal law or applicable rules or orders of the Federal Communications Commission. Section 60.165 limits the commission's authority to adopt any rule or order that would prescribe for any local exchange company any affiliate rule, that is more burdensome than federal law or applicable rules or orders of the Federal Communications Commission.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 54.102, 54.105, 60.164, and 60.165.

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

Filed with the Office of the Secretary of State on November 27, 2000.

TRD-200008217
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 17, 2000
Proposal publication date: September 8, 2000
For further information, please call: (512) 936-7308

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.10, 70.23, 70.70, 70.71, 70.77

The Texas Department of Licensing and Regulation adopts amendments to §§70.10, 70.23, 70.70, 70.71, and 70.77, concerning industrialized housing and buildings, without changes to the proposed text as published in the September 29, 2000 issue of the *Texas Register* (25 TexReg 9797) and will not be republished.

The sections are being adopted to add and delete definitions, add additional code inspector certifications, revise the method of transitioning documents between new and old code editions, change the requirements for information provided on floor plans or cover sheets of plans, and revise the requirements for placement of decals, insignia, and data plates on modules and modular components.

The amendments to §70.10 add new definitions and delete definitions that are no longer needed. Terms requiring definitions were added to other sections of the rules in previous rule changes and other terms defined in 70.10 were deleted from sections of the rules in previous rule changes.

The amendments to §70.23 expand the code inspector certifications that may be accepted in an application for approval as a third party inspector. The Texas Industrialized Building Code Council has determined that the certifications added are equivalent to those already accepted.

The amendments to §70.70(a)(5) revise the method of transitioning approval of documents between the old code editions and the new code editions. This will simplify the process for transitioning approval from old code editions to new code editions. The amendments to §70.70(b) revise the information required on the floor plan, cover page, or title sheet of the plans for each model or project under the Industrialized Housing and Buildings (IHB) program. These changes will make it easier for local officials to locate the IHB decal or insignia and the data plate on the module or modular component and eliminate the confusion caused by the present requirement that the wind speed and wind load be specified on the floor plan or cover sheet.

The amendments to §70.71 revise the requirements for the placement of the data plate on modules constructed under the Industrialized Housing and Buildings program and revise the information contained on the data plate. The change will make it easier for the local officials to locate the data plate on the modules or modular components and eliminate the confusion caused by the present requirement that the wind speed and wind load be specified on the data plate.

The amendments to §70.77 revise the requirements for the placement of the decal or insignia on industrialized housing and buildings modules or modular components constructed under the Industrialized Housing and Buildings program. These changes will make it easier for the local officials to locate the decal or insignia on the modules or modular components.

No comments were received regarding adoption of these amendments.

The amendments are adopted under Article 5221f-1 that authorizes the Commissioner of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Article.

The Article and Code affected by the amendments is Article 5221f-1 and Texas Occupations Code, Chapter 51.

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

Filed with the Office of the Secretary of State on November 30, 2000.

TRD-200008331
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 20, 2000
Proposal publication date: September 29, 2000
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER N. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §230.436, §230.437

On October 6, 2000, the State Board for Educator Certification (SBEC) adopted amendments to 19 Texas Administrative Code §230.436 and §230.437, relating to certificate issuance procedures, including certification by exam, without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10610).

The proposed amendments would reduce fees currently charged to certified educators seeking additional certification through examination by up to $75 per application. The proposed amendments would also delete the current internship required of some educators seeking to add other areas to their certification. The proposed amendments are designed to lower unnecessary barriers for currently certified educators who want to add areas of certification by passing the professional examinations for those other areas. By reducing the application fee and deleting the internship requirement, the proposed amendments would increase the pool of certified applicants and expand the educator's versatility to teach in more assignments. This flexibility would help address supply problems in certain subject and geographic areas, benefiting public school students and school districts. The amendments would also streamline the certification process for educators and SBEC staff and reduce agency overhead.

No comments were received during the statutory period for public comment following publication of the notice of the proposed amendments in the *Texas Register*.

The amendments relating to the administration of certification by examination were adopted under the authority of Texas Education Code, §21.041(b)(2)(4) and §21.056, which require the Board to specify the classes of certificates issued and to provide for a certified educator to qualify for additional certification to teach at a grade level or in a subject area not covered by the educator's certificate upon satisfactory completion of an examination or other assessment of the educator's qualification. The amendment relating to the amount of the fee for certification by examination was proposed under the authority of Texas Education Code, §21.041(c), which requires the Board to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the certificate.

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

Filed with the Office of the Secretary of State on November 27, 2000.

TRD-200008220
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: December 17, 2000
Proposal publication date: October 27, 2000
For further information, please call: (512) 469-3011

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 365. LICENSING

22 TAC §365.1

The Texas State Board of Plumbing Examiners adopts amendments to §365.1 which describe the categories and descriptions of the licenses and endorsements issued by the Board and the scope of work permitted under each license and endorsement without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5542).

No comments were received regarding the proposed amendments.

The following is a restatement of the rule's factual basis: The proposed rule amendment is part of the Board's intent to comply with House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167, and the Board's rule review plan, which require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000. The proposed amendments to §365.1 do not change the scope of work that the current §365.1 allows under any license or endorsement, but further clarifies the existing requirements.

The amendments to §365.1(1) clarify that a Master Plumber may perform plumbing work and enter into contracts and agreements to perform plumbing work for the general public. Superfluous language that in this section is deleted, since it is already contained in other, more appropriate sections of the Board Rules.

The amendments to §365.1(2) simply replace the word "them" with "Master Plumbers" for clarity.

The amendments to §365.1(3) more correctly identify the name of the Medical Gas Piping Installation Endorsement and clarify exactly what medical gas piping includes.

The amendments to §365.1(4) mirror and further clarify the requirements of the Act regarding the prohibition of Plumbing Inspectors from having any financial or advisory interest in a plumbing company and define how a Plumbing Inspector shall verify his or her employment or agency for a political subdivision prior to performing plumbing inspections.

The amendments to §365.1(5) simply reword the section regarding the Water Supply Protection Specialist endorsement for grammatical correctness and clarity of the existing language.

The amendments to §365.1 are proposed under and affect Texas Revised Civil Statutes Annotated Article 6243-101("Act"), §5(a), (Vernon Supp. 2000), the rule it amends and House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 together with the Board's rule review plan. Section 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 and the Board's rule review plan require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000.

No other statute, article, or code is affected by this proposed rule 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 November 28, 2000.

TRD-200008251
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Effective date: December 18, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 458-2145

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22 TAC §365.3

The Texas State Board of Plumbing Examiners repeals §365.3 which states the requirements and qualifications necessary for an individual to obtain a license or endorsement issued by the Board without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5543).

No comments were received regarding the proposed amendments.

The following is a restatement of the rule's factual basis: Section 363.1 contains much of the same language that is found in §365.3 regarding the requirements and qualifications necessary for an individual to obtain a license or endorsement issued by the Board. Section 363.1 is simultaneously being amended to delete all superfluous or obsolete language and to add all of the necessary language that is currently contained in §365.3. The result is that all license and endorsement requirements are contained in one rule section instead of two. The rule repeal is part of the Board's intent to comply with House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167, and the Board's rule review plan, which require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000. The repeal of §365.3 does not change any of the current requirements or qualifications to obtain a license or endorsement issued by the Board.

Section 365.3 is repealed under and affect Texas Revised Civil Statutes Annotated Article 6243-101("Act"), §5(a), (Vernon Supp. 2000), and House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 together with the Board's rule review plan. Section 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 and the Board's rule review plan require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000.

No other statute, article, or code is affected by this proposed rule changes.

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

Filed with the Office of the Secretary of State on November 28, 2000.

TRD-200008252
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Effective date: December 18, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 458-2145

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22 TAC §365.4

The Texas State Board of Plumbing Examiners adopts amendments to §365.4 which describe the conditions under which the Board shall issue or withhold a license or endorsement without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5544).

No comments were received regarding the proposed amendments.

The following is a restatement of the rule's factual basis: The proposed rule amendments are part of the Board's intent to comply with House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167, and the Board's rule review plan, which require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000. The proposed amendments to §365.4 do not change the conditions under which the Board shall issue or withhold a license or endorsement, but further clarify the existing conditions. The clarification is accomplished by separating the existing language into two subparagraphs and adding language which confirms that a Plumbing Inspector may be an agent for a political subdivision.

The amendments to §365.4 are proposed under and affect Texas Revised Civil Statutes Annotated Article 6243-101("Act"), §5(a), (Vernon Supp. 2000), the rule it amends and House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 together with the Board's rule review plan. Section 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX,§167 and the Board's rule review plan require the

Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000.

No other statute, article, or code is affected by this proposed rule 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 November 28, 2000.

TRD-200008253
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Effective date: December 18, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 458-2145

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22 TAC §365.5

The Texas State Board of Plumbing Examiners adopts amendments to §365.5 which set forth the requirements for renewal of a license or endorsement issued by the Board without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5544).

No comments were received regarding the proposed amendments.

The following is a restatement of the rule's factual basis: The rule amendments are part of the Board's intent to comply with House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167, and the Board's rule review plan, which require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000. The proposed amendments to §365.6 do not change the current renewal requirements, but further clarify the existing requirements and delete superfluous and obsolete language.

The amendments to §365.5 are proposed under and affect Texas Revised Civil Statutes Annotated Article 6243-101("Act"), §5(a), (Vernon Supp. 2000), the rule it amends and House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 together with the Board's rule review plan. Section 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 and the Board's rule review plan require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000.

No other statute, article, or code is affected by this proposed rule 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 November 28, 2000.

TRD-200008254
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Effective date: December 18, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 458-2145

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22 TAC §365.6

The Texas State Board of Plumbing Examiners adopts amendments to §365.6 which set forth the conditions under which a license or endorsement issued by the Board will expire and the requirements for renewing an expired license or endorsement without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 *TexReg* 5545).

No comments were received regarding the proposed amendments.

The following is a restatement of the rule's factual basis: The rule amendments are part of the Board's intent to comply with House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167, and the Board's rule review plan, which require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000. The amendments to §365.6 do not change the current requirements, but further clarify the existing requirements and deletes superfluous language.

The amendments to §365.6 are adopted under and affect Texas Revised Civil Statutes Annotated Article 6243-101("Act"), §5(a), (Vernon Supp. 2000), the rule it amends and House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 together with the Board's rule review plan. Sec. 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 and the Board's rule review plan require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000.

No other statute, article, or code is affected by this adopted rule 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 November 28, 2000.

TRD-200008255
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Effective date: December 18, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 458-2145

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22 TAC §365.8

The Texas State Board of Plumbing Examiners adopts amendments to §365.8 which sets forth the requirement that each licensee shall notify the Board of any change in the licensee's name or address without changes to the proposed text as

published in the June 9, 2000, issue of the *Texas Register* (25 *TexReg* 5546).

No comments were received regarding the proposed amendments.

The following is a restatement of the rule's factual basis: The proposed rule amendment is part of the Board's intent to comply with House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167, and the Board's rule review plan, which requires the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000. The proposed amendments to §365.8 clarify that the notification to the Board be in writing and further require that each Licensed Plumbing Inspector notify the Board in writing of each political subdivision that the Plumbing Inspector is employed by or is an agent for the purposes of performing plumbing inspections and any change in employment or agency status within thirty days of status change. The notification requirements are currently in effect for the licensees, however the thirty day notification requirement is new and is sufficient time for the licensee to comply with the requirement.

The amendments to §365.8 are adopted under and affect Texas Revised Civil Statutes Annotated Article 6243-101("Act"), §5(a), (Vernon Supp. 2000), the rule it amends and House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, Section 167 together with the Board's rule review plan. Sec. 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 and the Board's rule review plan require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000.

No other statute, article, or code is affected by this adopted rule 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 November 28, 2000.

TRD-200008256
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Effective date: December 18, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 458-2145

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22 TAC §365.9

The Texas State Board of Plumbing Examiners adopts amendments to §365.9 which describes certain general conditions that may lead to a reprimand, suspension or revocation of an individual's license, states the general procedures that the Board must follow when investigating allegations of violations, and states that a licensee has a right to a hearing before the Board if the Board proposes to reprimand, suspend or revoke the individual's license without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5547).

No comments were received regarding the proposed amendments.

The following is a restatement of the rule's factual basis: The rule amendments are part of the Board's intent to comply with House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167, and the Board's rule review plan, which requires the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000. The amendments to §365.11 do not change the requirements of the existing rule, but further clarify the current requirements and delete obsolete language.

The amendments to §365.9 are adopted under and affect Texas Revised Civil Statutes Annotated Article 6243-101("Act"), §5(a), (Vernon Supp. 2000), the rule it amends and House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 together with the Board's rule review plan. §5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 and the Board's rule review plan requires the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000.

No other statute, article, or code is affected by this adopted rule 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 November 28, 2000.

TRD-200008257
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Effective date: December 18, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 458-2145

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22 TAC §365.11

The Texas State Board of Plumbing Examiners adopts amendments to §365.11 which states and defines certain plumbing work that may be performed without a plumbing license as provided by the Plumbing License Law, and that the exempted work is subject to the inspection requirements of the local jurisdictions. This section also states that the Board may waive certain examination and licensing rule requirements. The amendments are adopted without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5547).

No comments were received regarding the proposed amendments.

The following is a restatement of the rule's factual basis: The rule amendments are part of the Board's intent to comply with House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, Section 167, and the Board's rule review plan, which require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000. The amendments to §365.11 do not change the requirements of the existing rule, but further clarify the current requirements and delete obsolete language.

The amendments to §365.11 are adopted under and affect Texas Revised Civil Statutes Annotated Article 6243-101("Act"), §5(a), (Vernon Supp. 2000), the rule it amends and House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 together with the Board's rule review plan. § 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 and the Board's rule review plan requires the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000.

No other statute, article, or code is affected by this adopted rule 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 November 28, 2000.

TRD-200008258
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Effective date: December 18, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 458-2145

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22 TAC §365.13

The Texas State Board of Plumbing Examiners adopts amendments to §365.13 which requires the Board to refuse to renew the license of any individual who is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5548).

No comments were received regarding the proposed amendments.

The following is a restatement of the rule's factual basis: The rule amendments are part of the Board's intent to comply with House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167, and the Board's rule review plan, which requires the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000. The amendments to §365.13 clarify and more clearly reflect the requirements of the Texas Education Code §57.91. The amendments also clarify that a licensee whose license has not been renewed due to a default on a student loan is entitled to a hearing before the Board, if requested by the licensee.

The amendments to §365.13 are adopted under and affect Texas Revised Civil Statutes Annotated Article 6243-101("Act"), §5(a), (Vernon Supp. 2000), the Texas Education Code § 57.91, the rule it amends and House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 together with the Board's rule review plan. Sec. 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. The Texas Education Code § 57.91 requires the Board to refuse to renew the license of any individual who is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation. House Bill No. 1, 75th Legislature, Regular Session, 1998-1999, Article IX, §167 and the Board's rule review plan require the Board to complete a review of Chapter 365 of the Board Rules by August 31, 2000.

No other statute, article, or code is affected by this adopted rule 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 November 28, 2000.

TRD-200008259
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Effective date: December 18, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 458-2145

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.11

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.11, concerning Continuing Education, with changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9357).

The rule is being amended to clarify the requirements for all licensees in obtaining and documenting relevant and appropriate mandatory continuing education hours.

The amended rule will ensure that all licensees obtain relevant and appropriate continuing education in a uniform manner.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

§461.11. Continuing Education.

(a) Requirements. All licensees of the Board are obligated to continue their professional education by completing a minimum of 12 hours of continuing education during each year that they hold a license from the Board regardless of the number of separate licenses held by the licensee.

(b) Relevancy. All continuing education hours must be directly related to the practice of psychology. The Board shall make the determination as to whether the activity or publication claimed by the licensee is directly related to the practice of psychology. It is the responsibility of the licensee to engage in activities which provide demonstrated relevance to the practice of psychology. In order to establish relevancy to the practice of psychology, the Board may require a licensee to produce, in addition to the documentation required by subsection (d) of this section, course descriptions, conference catalogs and syllabi, or other material as warranted by the circumstances. The Board

does not pre-approve continuing education credit. The Board shall not allow continuing education credit for personal psychotherapy, workshops for personal growth, the provision of services to professional associations by a licensee, foreign language courses, or computer training classes.

(c) Permitted activities.

(1) Continuing education hours may be obtained by participating in one or more of the following activities, provided that the specific activity may not be used for credit more than once:

(A) attendance or participation in a formal continuing education activity for which continuing education hours have been preassigned by a provider;

(B) teaching or attendance as an officially enrolled student in a graduate level course in psychology at a regionally accredited institution of higher education;

(C) presentation of a program or workshop; and

(D) authoring or editing publications.

(2) Providers include:

(A) national, regional, state, or local psychological associations; or

(B) other formally organized groups providing continuing education that is directly related to the practice of psychology. Examples of such providers include: public or private institutions, professional associations, and training institutes devoted to the study or practice of particular areas or fields of psychology; professional associations relating to other mental health professions such as psychiatry, counseling, or social work; state or federal agencies; and regional service centers for public school districts.

(3) Credits will be provided as follows:

(A) For attendance at formal continuing education activities, the number of hours pre-assigned by the provider.

(B) For teaching or attendance of a graduate level psychology course, four hours per credit hour. A particular course may not be taught or attended by a licensee for continuing education credit more than once.

(C) For presentations of workshops or programs, three hours for each hour actually presented, for a maximum of six hours per year. A particular workshop or presentation topic may not be utilized for continuing education credit more than once.

(D) For publications, eight hours for authoring or co-authoring a book; six hours for editing a book; four hours for authoring a published article or book chapter. A maximum credit of eight hours for publication is permitted for any one year.

(4) When obtained, any submitted continuing education hours other than hours banked pursuant to subsection (g) of this section, must have been obtained during the 12 months prior to the renewal period for which they are submitted.

(d) Documentation. It is the responsibility of each licensee to maintain documentation of all continuing education hours claimed under this rule and to provide this documentation upon request by the Board. Licensees shall maintain documentation of all continuing education hours claimed for at least five years. The Board will accept as documentation of continuing education:

(1) for hours received from attendance or participation in formal continuing education activities, a certificate or other document containing the name of the sponsoring organization, the title of the activity, the number of pre-assigned continuing education hours for the activity, the signature of an official representative of the sponsoring organization, and the name of the licensee claiming the hours;

(2) for hours received from attending college or university courses, official grade slips or transcripts issued by the institution of higher education must be submitted;

(3) for hours received for teaching college or university courses, documentation demonstrating that the licensee taught the course must be submitted;

(4) for presenters of continuing education workshops or programs, copies of the official program announcement naming the licensee as a presenter and an outline or syllabus of the contents of the program or workshop; and

(5) for authors or editors of publications, a copy of the article or table of contents or title page bearing the name of licensee as the author or editor.

(e) Declaration Form. All licensees must sign and submit a completed Continuing Education Declaration Form for each year in which they are licensed by the Board specifying the continuing education received for the preceding renewal period. Licensees wishing to renew their license must submit the declaration form with the annual renewal form and fee no later than the renewal date. Licensees who do not wish to renew their license must submit the declaration form along with a written request to retire the license on or before the renewal date. Licensees shall not submit documentation of continuing education credits obtained unless requested to do so by the Board.

(f) Audit. The Board conducts two types of audits. Licensees shall comply with all Board requests for documentation and information concerning compliance with continuing education and/or Board audits.

(1) Random audits. Each month, 10% of the licensees will be selected by an automated process for an audit of the licensee's compliance with the Board's continuing education requirements. The Board will notify a licensee by mail of the audit. Upon receipt of an audit notification, licensees planning to renew their licenses must submit requested documentation of compliance to the Board with their annual renewal form no later than the renewal date of the license. Licensees wishing to retire their licenses should submit the requested documentation no later than the renewal date of the license.

(2) Individualized audits. The Board will also conduct audits of a specific licensee's compliance with its Continuing Education requirements at any time that the Board determines that there are grounds to believe that a licensee has not complied with the requirements of this rule. Upon receipt of notification of an individualized audit, the licensee must submit all requested documentation within the time period specified in the notification.

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

Filed with the Office of the Secretary of State on November 28, 2000.

TRD-200008243

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 18, 2000
Proposal publication date: September 22, 2000
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.14

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.14, concerning Written Examinations, without changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9357).

The rule is being amended to clarify the cutoff scores for the national examination due to the computerization of that examination.

The amended rule will ensure that only qualified and competent applicants receive licensure.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the statute.

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

Filed with the Office of the Secretary of State on November 28, 2000.

TRD-200008234
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 18, 2000
Proposal publication date: September 22, 2000
For further information, please call: (512) 305-7700

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CHAPTER 473. FEES

22 TAC §473.2, §473.4

The Texas State Board of Examiners of Psychologists adopts amendments to §473.2 and §473.4, concerning Examination Fees, without changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9357).

The rules are being amended to cover the cost of the examination, which has been increased by $100 by the owner and distributor of the examination and to accordingly adjust the late fees for renewals.

The amended rules will ensure that eligible applicants pay fees adequate to cover the cost of the national exam and their renewals.

No comments were received regarding the adoption of the amendment.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501,which provides the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the statute.

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

Filed with the Office of the Secretary of State on November 28, 2000.

TRD-200008235
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 18, 2000
Proposal publication date: September 22, 2000
For further information, please call: (512) 305-7700

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.53

The Texas State Board of Public Accountancy adopts an amendment to §501.53 concerning Applicability of Rules of Professional Conduct without changes to the proposed text as published in the September 29, 2000 issue of the *Texas Register* (25 TexReg 9814).

The amendment allows the correct rule numbers to be cited in this rule.

The amendment will function by correcting the previously published rule numbers.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

Cross references Statutes codes in proposed only, not in adopt print rule in final form no codes. Let preamble take care of changes preamble for rules final adopt

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008266

William Tracy
Executive Director
Texas State Board of Public Accountancy
Effective date: December 19, 2000
Proposal publication date: September 29, 2000
For further information, please call: (512) 305-7848

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CHAPTER 527. QUALITY REVIEW

22 TAC §527.4

The Texas State Board of Public Accountancy adopts an amendment to §527.4 concerning Quality Review Program with changes to the proposed text as published in the August 4, 2000, issue of the *Texas Register* (25 TexReg 7317). The changes are replacing of "are" in subsection (4) with "is a". In subsection (7) in the last sentence "their" is replaced with "its" and "members" is replaced with "member".

The amendment allows for a clarification that the Board requires a quality review every three years or sooner if the quality review organization so requires, adopts "system reviews and engagement reviews" as promulgated by the American Institute of Certified Public Accountants (AICPA) in its Standards for Performing and Reporting on Peer Reviews and does not recognize "report reviews" as promulgated by the AICPA.

The amendment will function by clarifying that the Board requires a quality review every three years or sooner, that 'system reviews and engagement reviews" will be adopted as described by the AICPA Standards for Performing and Reporting on Peer Reviews but "report reviews" will not be adopted.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

§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 licensed or registered with the board that 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 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 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. In addition, the firm shall schedule and begin an additional review within three years of the previous review's due date, or earlier as may be required by the sponsoring organization.

(B) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review due date.

(3) Standards. The board adopts system reviews and engagement reviews described in "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 firms. The board does not recognize "report reviews" performed under the AICPA Standards.

(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 is a current member 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 are approved by the board.

(7) Mergers, combinations, dissolutions, 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. The succeeding firm shall retain its peer review status and the review due date.

(8) The board will accept extensions granted by the sponsoring organization to complete a review, provided the board is notified by the firm within 20 days of the date that 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 and outstanding fees paid prior to transfer between sponsoring organizations.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008271

William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: December 19, 2000
Proposal publication date: August 4, 2000
For further information, please call: (512) 305-7848

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22 TAC §527.6

The Texas State Board of Public Accountancy adopts an amendment to Section 527.6 concerning Reporting to the Board without changes to the proposed text as published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9815).

The amendment allows those firms which had a SEC Practice Section Peer review performed to submit a copy of the report to the Board. Subsection (b) corrects some language and clarifies that the Board wants to receive the peer review reports and their comments.

The amendment will function by increasing the pool of peer reviewers that are available to CPA firms.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate 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.

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008269
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: December 19, 2000
Proposal publication date: September 29, 2000
For further information, please call: (512) 305-7848

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PART 28. EXECUTIVE COUNCIL OF PHYSICAL AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §651.1

The Texas Board of Physical Therapy and Occupational Therapy Examiners adopts amendments to §651.1 Occupational Therapy Fees without changes to the proposed text as published in the September 1, 2000 issue of the *Texas Register*, and will not be republished. The amendment will restructure licensing fee and make administrative procedures for OT and PT application and licensure as uniform as possible to achieve greater administrative efficiency. It also adds a fee to restore a previously held Texas license.

No comments were received regarding these amendments.

The rule is adoption under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 22, Part 28, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Filed with the Office of the Secretary of State on November 27, 2000.

TRD-200008213
John P. Maline
Executive Director
Executive Council of Physical and Occupational Therapy Examiners
Effective date: December 17, 2000
Proposal publication date: September 1, 2000
For further information, please call: (512) 305-6900

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PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts the repeal of §§741.1, 741.2, 741.13-741.26, 741.33, 741.41, 741.61, 741.62, 741.64, 741.65, 741.67, 741.81, 741.82, 741.84, 741.85, 741.87, 741.91, 741.101-741.103, 741.121- 741.123, 741.141-741.143, 741.161-741.166, 741.181, 741.182, 741.191-741.201, and 741.301- 741.303; new §§741.1, 741.13, 741.14, 741.33, 741.41, 741.61, 741.62, 741.64, 741.65, 741.67, 741.81, 741.82, 741.84, 741.85, 741.91, 741.101-741.103, 741.111, 741.112, 741.121, 741.141, 741.142, 741.161-741.165, 741.181, 741.182, and 741.191-741.195; and amendments to §§741.11, 741.12, 741.31, 741.32, 741.63, 741.66, 741.83, and 741.86; concerning speech-language pathology and audiology. Sections 741.1, 741.41, 741.61, 741.62, 741.65, 741.81, 781,82, 741.84, 741.85, 741.91, 741.103, 741.112, 741.141, 741.161, 741.191, 741.192, and 741.194 are adopted with changes to the proposed text as published in the July 21, 2000, issue of the *Texas Register* (25 TexReg 6895). The repealed sections and §§741.11-741.14, 741.31-741.33, 741.63, 741.64, 741.66, 741.67, 741.83, 741.86, 741.101-741.102, 741.111, 741.121, 741.142, 741.162-741.165, 741.181, 741.182, 741.193, and 741.195 are adopted without changes and will not be republished.

The Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The sections have been reviewed and the board has determined that reasons for adopting the sections continue to exist in that a rule on the subjects is needed; however the rule needs revision as described in this preamble. In addition §§741.301- 741.303 have been reviewed

and the board has determined that the reasons for adopting the sections as a rule no longer continue to exist.

The adoption of the repeals, new sections, and amendments will insure continuing competency and effective regulation of speech-language pathologists and audiologists. In addition, the repeals, new sections, and amendments will cover the cost of administering the program, establish accountability, and provide service to the public. The repeals, new rules, and amendments should enable licensees, employers, and consumers to understand more clearly the requirements and process for licensure and renewal; maintenance of continuing education; the code of ethics; the time periods established; maintenance of records; and the basis and process for denial, probation, suspension, or revocation of an application, license, or registration. The new rule concerning language and speech screening in the client's native language will provide the client with more appropriate services. The new rule concerning hearing screening should identify clients with hearing problems and avoid over-referrals. The new rule concerning the decrease in continuing education hours that may be acquired during a renewal period should enable licensees to remain current the field of speech-language pathology and audiology and is necessary because the professions are constantly changing. In addition clients should benefit from any new procedures or knowledge acquired by the licensee. The new rule stating the consumer of a hearing instrument may have a trial period of 30 consecutive days should clarify this time frame for both the licensee and consumer and insure the purchaser has an appropriately fitted hearing instrument. The new rule increasing the number of course work hours from 9 to 18 in core curriculum for the applicant of an assistant license should better prepare the assistant to provide services to the client. Listing the hours of course work that are not acceptable should enable the applicant to determine if he or she would qualify for the license prior to submitting an application, fee, and other documentation required to evaluate an application. The new rule listing the time period in which the application form must be signed and dated will insure current information is being presented to the board office.

The adopted repeals, new sections, and amendments cover the entire chapter. Because of the numerous repeals, new sections, and amendments, the board elected to identify the changes by subchapters. Article 4512j, V.T.C.S., was codified by the 76th Texas Legislature, 1999, as the Texas Occupations Code, Chapter 401, and this reference has been made throughout the rules. All references to other laws which were codified have been changed. Duplicative language that is currently in both the Texas Occupations Code and this chapter has been deleted throughout the sections and the Texas Occupations Code referenced. Also, language that the Texas Legislative Council deemed unnecessary during the codification process has been deleted from these sections. Throughout Chapter 741 some sections have catch lines and others do not; all catch lines are being deleted for consistency. The board proposes a new Subchapter H relating to fitting and dispensing of hearing instruments and renumbered the following subchapters accordingly.

Only changes to existing language have been identified in the following narratives:

SUBCHAPTER A:

Subchapter A is being renamed to more accurately reflect what the subchapter contains.

Section 741.1 which defines the purpose of the section is being repealed since this language is not necessary.

Section 741.2 is being repealed and replaced with new §741.1 concerning terms commonly used in the professions while deleting duplicative or unnecessary language.

SUBCHAPTER B:

Sections 741.11 and 741.12 are being amended to change the title of board officers and to allow the complaints committee presiding officer to call a meeting when necessary.

Sections 741.13-741.25 are being repealed and replaced with new §741.13 to reorganize only pertinent information relating to duties and powers of the board while deleting duplicative, unnecessary or language that would be more appropriate as a board policy.

Section 741.26 is being repealed and replaced with new §741.14 to clarify the process to petition the board for a rule change and to require the submission of the economic cost associated with the petition for a rule change.

SUBCHAPTER C:

Subchapter C is being renamed to more accurately reflect what the subchapter, as proposed, will contain.

Section 741.31 is being amended to clarify assessment of language and speech and to require communication screening in the client's native language.

Section 741.32 is being amended to extend the date for using 25 dB HL for hearing screening; to require testing in both ears; to establish new hearing screening procedures effective September 1, 2001, to use 25 dB HL for pre-kindergarten and kindergarten and 20 dB HL for grades 1 through 12; to define hearing screening failures; and to clarify follow up procedures.

Current §741.33 is being repealed from this subchapter and pertinent language has been moved to new Subchapter H. Fitting and Dispensing of Hearing Instruments, as new §741.103, relating to Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments.

New §741.33 will clarify that licensed speech-language pathologists, interns in speech- language pathology, and assistants in speech-language pathology may participate in universal newborn hearing screening.

SUBCHAPTER D:

Section 741.41 is being repealed and replaced with new §741.41 concerning the code of ethics to clarify the record maintenance process; include language concerning providing false or misleading information on an application form; require that an intern or assistant abide by the decision of the supervisor; require that a supervisor limit the number of interns and assistants being supervised; clarify documentation concerning supervision; add language relating to denial of renewal for failure to pay child support; and reorganize and clarify existing language.

SUBCHAPTER E AND SUBCHAPTER F:

Because these two subchapters are parallel for the professions of speech-language pathology and audiology, they have been addressed together.

Sections 741.61 and 741.81 are being repealed and replaced with new §741.61 and §741.81 respectively, to require that the

applicant pass the examination within two years of the end of the internship or repeat the experience; limit the number of semester hours of course work awarded graduate credit that may be earned before the baccalaureate degree is granted; delete language relating to basic course work and specific areas in which clinical experience must be acquired since colleges and universities verify this information before granting a degree; and to reorganize and clarify existing language.

Sections 741.62 and 741.82 are being repealed and replaced with new §741.62 and §741.82 respectively, to require that course work and clinical experience be completed within 10 years of the beginning of the internship; expand and clarify segments, evaluation, maintenance of records, and changes in internship; allow the board and a university to designate specific individuals to assist them, and reorganize and clarify existing language.

Sections 741.63 and 741.83 are being amended to clarify that "special conditions" are actually a "waiver" for applicants who hold the American Speech-Language-Hearing Association certificate of clinical competence. The section titles are also being amended to reflect this clarification.

Sections 741.64 and 741.84 are being repealed and replaced with new §741.64 and §741.84 respectively, to define how an individual who obtains the American Speech- Language-Hearing Association's certificate of clinical competence may qualify; delete unnecessary language; and reorganize and clarify existing language.

Sections 741.65 and 741.85 are being repealed and replaced with new §741.65 and §741.85 respectively, to clarify and expand the existing language concerning the clinical deficiency plan and requests to change method of supervision; increase the number of course work hours required in core curriculum that must be completed within 10 years of the date of application for the assistant license; identify course work that is not acceptable; delete language concerning course work earned from foreign universities; revise initial client contact; define part-time supervision; and to reorganize and clarify existing language.

Sections 741.66 and 741.86 are being amended to clarify requirements for a temporary certificate of registration. In addition, §741.86 is being amended to state the holder of the registration may not fit and dispense hearing instruments.

Section 741.67 is being repealed in order to reference the Texas Occupations Code and remove duplicative language for the requirements of the limited license to practice in the public schools.

Current §741.87 is being repealed from this subchapter and pertinent language is being moved to new Subchapter H. Fitting and Dispensing of Hearing Instruments, as new §741.101, relating to Requirements for Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments and new §741.102, relating to General Practice Requirements of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments. In addition, language to clarify that an intern in audiology may only fit and dispense hearing instruments under supervision has been included. Other language in current §741.87 is being moved to other more appropriate sections of the rules, such as §741.161 relating to Renewal Procedures.

SUBCHAPTER G:

Section 741.91 concerning dual licenses is being repealed and replaced with new §741.91 to incorporate the same changes being proposed to §§741.61, 741.63, 741.81, and 741.83; reorganize existing language; remove unnecessary language; and rename the section.

SUBCHAPTER H:

This is a new subchapter that incorporates language from several sections of the current rules into one subchapter as Subchapter H. Fitting and Dispensing of Hearing Instruments.

New §741.101, relating to Requirements for Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments, contains pertinent language from current §741.87 which is being repealed. In addition language to clarify that an intern in audiology may only fit and dispense hearing instruments under supervision is being proposed.

New §741.102, relating to General Practice Requirements of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments, contains pertinent language from current §741.41(b)(1), (4), and (5) and language from current §741.87(g). The language concerning the 30 day trial period upon the return of a hearing instrument has been clarified to define the trial period as 30 consecutive days.

New §741.103, relating to Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments, contains the language from current §741.33. For clarification, the language has been reorganized and unnecessary language deleted.

SUBCHAPTER I:

Current Subchapter H. Application Procedures is being repealed and replaced with new Subchapter I. Application Procedures.

Section 741.101 which defines the purpose of the section is being repealed since this language is not necessary.

Section 741.102 is being repealed and replaced with new §741.111 to expand and clarify application submission procedures; reference time periods for processing; identify Board mailing address; delete duplicative language; and reorganize existing language. The section title is being changed to more accurately reflect what the section contains.

Section 741.103 is being repealed and replaced with new §741.112 to clarify that the application and initial license fee have been combined; add name of council that determines accreditation of college or university programs; allow college or university program director to designate another person to provide information; delete reference to limited license to practice in the public schools; add documentation required for dual applicants; define the time period in which an application form should be signed and dated to reflect the actual process being conducted by office staff; reference time period for passing the examination; and delete unnecessary language.

SUBCHAPTER J:

Current Subchapter I. Licensure Examinations is being repealed and replaced with new Subchapter J. Licensure Examinations.

Section 741.121 which defines the purpose of the section is being repealed since this language is not necessary.

Sections 741.122 and 741.123 are being repealed and replaced with new §741.121 to rename the section; correct the reference

for the examination administrator; clarify that tests are administered separately in speech-language pathology and in audiology; define the passing score; identify who shall notify the applicant of the results of the examination; and remove duplicative or unnecessary language.

SUBCHAPTER K:

Current Subchapter J. Licensing and Registration Procedures is being repealed and replaced with new Subchapter K. Issuance and Display of License and Registration. In addition, the subchapter title is being renamed to more accurately define what the subchapter contains.

Section 741.141 which defines the purpose of the section is being repealed since this language is not necessary.

Section 741.142 is being repealed and replaced with new §741.141 to delete the reference to the limited license to practice in the public schools; move existing language concerning denial of a license to Subchapter N; reorganize and clarify process for issuance of a license, certificate, and registration; and delete unnecessary language.

Section 741.143 is being repealed and replaced with new §741.142 to define how all licenses, certificates, and registrations, including holders of provisional licenses, limited licenses, and temporary certificates of registration, shall be displayed.

SUBCHAPTER L:

Current Subchapter K. License and Registration Renewal is being repealed and replaced with new Subchapter L. License and Registration Renewal.

Section 741.161 which defines the purpose of the section is being repealed since this language is not necessary.

Section 741.162 is being repealed and replaced with new §741.161 to rename the section; clarify that the temporary certificate of registration and the provisional license cannot be renewed; clarify renewal process for intern and assistant licenses and registration to fit and dispense hearing instruments; define how corrections are made on the renewal form; add language to this section that currently exists in other sections relating to renewal of a limited license, maintenance of the record of continuing education hours form, and denial of a license for failure to pay child support; delete unnecessary language; and reorganize existing language.

Section 741.163 is being repealed and replaced with new §741.162 to decrease the maximum number of continuing education hours that may be accrued; expand on maintenance of continuing education and acceptable verification; state that continuing education hours may not be earned prior to the effective date of the license; require prior board approval for continuing education in a related area; identify the passing examination score; delete unnecessary language; and reorganize existing language.

Section 741.164 is being repealed and replaced with new §741.163 to identify the name of the board form and fee that shall be submitted; require that the form be completed, signed, and dated; require submission of the CE log; state that accrued continuing education hours must still be available for use at the time of reactivation; prohibit a licensed audiologist or intern in audiology who has placed his or her license on the inactive status to fit and dispense hearing instruments; delete unnecessary language; and reorganize existing language.

Section 741.165 is being repealed and replaced with new §741.164 to require that the statement concerning the licensee's practice after expiration of the grace period be signed; state that a licensed audiologist or intern in audiology who has not renewed his or her license and registration prior to the end of the 60-day grace period may not fit and dispense hearing instruments; require submission of the CE log; delete unnecessary language; and reorganize existing language.

Section 741.166 is being repealed and replaced with new §741.165 concerning renewal of a licensee on active military duty with no changes to existing language.

SUBCHAPTER M:

Current Subchapter L. Fees and Processing Procedures is being repealed and replaced with new Subchapter M. Fees and Processing Procedures.

Section 741.181 is being repealed and replaced with new §741.181 to increase the fee for the temporary certificate of registration and the inactive fee; clarify that all fees are nonrefundable and that dual licenses are two separate licenses; identify the correct name for the inactive status fee and the provisional application and initial license fee; clarify how the application and initial license fee, which have been combined, are processed when funds returned because of insufficient checks, payment stopped, etc. are received; delete unnecessary language; reorganize existing language; and renumber accordingly.

Section 741.182 is being repealed and replaced with new §741.182 to rename the section to more accurately define what it contains; delete the reference to the letter of denial and provisional license holder because other sections of the rules address these issues; delete unnecessary language; and reorganize and clarify existing language to reflect the actual board process.

SUBCHAPTER N:

Current Subchapter M. Denial, Probation, Suspension, or Revocation of Licensure or Registration is being repealed and replaced with new Subchapter N. Denial, Probation, Suspension, or Revocation of a License or Registration.

Section 741.191 which defines the purpose of the section is being repealed since this language is not necessary.

Sections 741.192 and 741.195 are being repealed and replaced with new §741.191 concerning basis to deny, probate, suspend, or revoke a license or registration to delete unnecessary language; reorganize and clarify existing language; and add language currently in other sections of the existing rules concerning denial based on failure to pay child support or if a license in another state is revoked or suspended.

Sections 741.193, 741.194, and 741.200 are being repealed and replaced with new §741.192 concerning procedures for filing a complaint; denying, suspending or revoking a license or registration; to delete unnecessary language; reorganize and clarify existing language to reflect the actual procedures; and to identify duties of the complaints committee.

Sections 741.196, 741.197, and 741.199 are being repealed and replaced with new §741.193 concerning formal hearings and surrender of license or registration to delete unnecessary language; reorganize and clarify existing language; and identify the State Office of Administrative Hearings.

Section 741.198 is being repealed and replaced by new §741.194 concerning informal disposition or proceedings to delete unnecessary language and reorganize and clarify existing language to reflect actual process.

Section 741.201 is being repealed and replaced by new §741.195 concerning schedule of sanctions with no changes to existing language.

SUBCHAPTER N:

Current Subchapter N which contains §§741.301-741.303 concerning Publications is being repealed because it was determined this language is not required as a board rule.

The board published a Notice of Intention to Review the sections as required by Rider 167 in the *Texas Register* on May 28, 1999 (24 TexReg 4033). No comments were received by the board during the notice of intention period.

The following comments were received during the formal 30-day comment period concerning the proposed sections. Following each comment is the board's response and any resulting changes.

Comment: Concerning §741.31(b), a commenter stated that conducting language and speech screening in the client's native language could create fiscal implications to state or local government if the state or local government employs individuals to provide the services required. This amendment may also compromise time line implications in circumstances where there are numerous individuals to be screened who represent numerous different languages and staff to provide the services or individuals to assist the staff in the screening (ie. interpreters) are not available within the time line required.

Response: The board agreed with the commenter's statements but because any screening not conducted in an individual's native language would be invalid, the rule as written should remain. No change was made as a result of the comment.

Comment: Concerning §741.41(i)(4), four commenters asked that submission of proof of need to supervise more than four assistants and interns be deleted. This requirement would greatly impact the commenters' school district due to limited personnel and would prove burdensome to implement. The supervisor must submit proof of need to the board office and then await board approval. This delay could directly affect service to the children of the commenters' district. The commenters asked that the board allow a supervisor without his or own caseload to supervise five assistants and interns without submitting proof of need. A supervisor would have adequate time to provide appropriate supervision to five individuals.

Response: The board agreed in part with the commenters' statements. A supervisor of an intern and assistant is ultimately responsible for the services provided and must limit the number of individuals being supervised in order to assure that the appropriate level of service is provided to the clients or patients. In making this determination a supervisor must consider his or her own caseload, the caseload of the individuals being supervised, and the severity of the communication disorder. The board revised the rule to remove a specific number of individuals being supervised and included language concerning the supervisor's responsibility.

Comment: Concerning §741.61(b)(1)(A), a commenter asked that the board clarify what "at least 30 semester credit hours awarded graduate credit" means. Are the six hours leveling courses?

Response: The board agreed this language is unclear and deleted the reference to the 30 semester credit hours to coincide with the language in the Texas Occupations Code, §401.304.

Comment: Concerning §741.61(c) and §741.65(b)(3), a commenter asked if the 25 hours of observation for the applicant of a speech-language pathology license is intentionally different from the requirement that the applicant of the assistant in speech-language pathology license acquire 25 hours of observation specifically in speech-language pathology.

Response: The board agreed that this requirement is intentionally different and should remain so. Since most assistants receive very limited clinical observation and experience as undergraduates, the hours required for licensure should be earned in speech-language pathology. No change was made as a result of the comment.

Comment: Concerning §741.62(g)(2), a commenter asked that the board clarify what is meant by "36 consecutive months once initiated". Because of a pregnancy, there was a lapse of almost one year between the beginning and ending of her internship. Because of the interruption, must the intern repeat the weeks already completed? Or, could the 36-week internship be completed within a 36-month period of time?

Response: The board agreed the rule as written is unclear. The intent of the rule was that an intern could complete the internship within 36 months once initiated and has removed the word "consecutive". The board modified the rule to reflect the commenter's concern and to provide greater clarity.

Comment: Concerning §741.65(f)(3), one commenter requested clarification. Why should an assistant be allowed to renew the license without submitting a form from a speech- language pathologist accepting responsibility for the practice of the assistant? Why would an assistant that was not practicing want to renew the license?

Response: The Occupations Code requires that a licensee renew a license annually; a 60-day grace period is allowed. If the license is not renewed before expiration of the grace period, a late renewal penalty fee is assessed. The assistant who was not practicing at the time the license renewal was due but planned to resume practice within a short period of time would need to renew the license upon expiration to avoid payment of the late renewal penalty fee. The board agreed that the intent of the rule should remain, however the language has been revised for clarification.

Comment: Concerning §741.65(g), one commenter asked for clarification of "direct supervision". Does this mean the supervisor could be at the same location and provide supervision by means of reviewing therapy session results or planning with the assistant? Or does this mean actual observation of the assistant by the supervisor while the assistant is doing therapy?

Response: The board agreed with the latter statement. Because the word "direct" has numerous meanings, this subsection has been reworded and the word "direct" deleted. The required supervision is defined in paragraphs of subsection (g).

Comment: Concerning §741.65(i), three commenters asked that the board expand on the language concerning when an assistant may attend an Admission, Review, and Dismissal (ARD) without his or her supervisor present and what role or responsibilities

could be fulfilled. The commenters believed it was important because different answers were received when seeking clarification. The following three comments were submitted.

Concerning §741.65(i)(2)(A), could annual reviews and schedules change ARDs be interpreted as routine monitoring and schedule changes?

Concerning §741.65(i)(2)(B), could the written reports referenced be an evaluation report?

Concerning §741.65(i)(2)(C), could an assistant attend routine admission and dismissal ARDs without his or her supervisor present when the assistant has the speech-language pathologist's recommendations in written form?

Response: According to 19 T.A.C., Part 2, Texas Education Agency Rules, Chapter 89. Adaptations for Special Populations, Subchapter AA. Special Education Services, §89.1131(b)(1), and 34 Code of Federal Regulations, §300.344, an assistant in speech- language pathology cannot fulfill any of the required roles on the ARD meeting team which consists of parent/student; special education teacher or service provider (highest qualified); general education teacher; agency representative (administrator qualified to supervise); and a member who can interpret the implications of assessment. The board has withdrawn proposed §741.65(i) from consideration for permanent adoption and renumbered the following subsections accordingly. An assistant may not attend an Admission, Review, and Dismissal (ARD) without the supervisor being present.

Comment: Concerning §741.81(b)(3), one commenter asked if the board believed there was a need to regulate university course work.

Response: The board agreed there was a need for a uniform standard because discrepancies exist between universities. The language has been reworded to reflect a universally accepted standard.

Because Subchapter E relating to the Requirements for Licensure and Registration of Speech-Language Pathologist is parallel to Subchapter F relating to the Requirements for Licensure and Registration of Audiologists, the same changes made to §§741.61, 741.62, and 741.65 shall be made to corresponding §§741.81, 741.82, and 741.85. Accordingly, the change to §741.81(b)(3) shall be made to §741.61(b)(3).

Comment: Concerning §741.112(a)(3), one commenter stated it is the "Council on Academic Accreditation", not the "Council for Academic Accreditation".

Response: The board agreed and has made the change. The change was also made in §741.112(b)(3) and (f)(3).

Comment: Concerning §741.112(c)(4), one commenter asked why the language concerning college or university with a program not accredited by the American Speech-Language- Hearing Association (ASHA) Council on Academic Accreditation necessary since paragraph (3) requires ASHA verify that the applicant holds the certificate of clinical competence. It appears redundant.

Response: The board agreed that this language is inaccurate as written. The intent of the current language is to provide some method for foreign-educated applicants to submit proof of a master's degree. Paragraph (4) has been reworded to require a report from an educational credential evaluator instead of a transcript.

In addition to the changes made as a result of comments received, the board is making the following minor changes due to errors in publication of the proposed rules in the *Texas Register* and staff comments to clarify the intent and improve the accuracy of the sections.

Concerning §741.1(9), change "instruments" to "instrument" to correct publication error.

Concerning §741.62(g)(3), change "maximum" to "minimum" to correct publication error.

Concerning §741.65(f)(5), add "action" between "disciplinary" and "against" because it was omitted during publication.

Concerning §741.65(h)(5)(D), change "present" to "represent" for clarification.

Concerning §741.81(f), change "§741.62" to "§741.82" and delete "(relating to Requirements for an Intern in Speech-Language Pathology Lincense)" because the wrong section was referenced during publication.

Concerning §741.82(g)(3), change "maximum" to "minimum" to correct publication error.

Concerning §741.84(d)(1) and (2), change "section" to "Section" to correct publication error.

Concerning §741.85(f)(5), add "action" between "disciplinary" and "against" because it was omitted during publication.

Concerning §741.85(h)(5)(D), change "present" to "represent" for clarification.

Concerning §741.91(a)(1) and (2), change "section" to "Section" to correct publication error.

Concerning §741.91(a)(2)(B)(ii), change "pathology" to "pathologist" to correct publication error.

Concerning §741.103(1), "earns covered" was changed to "ears covered".

Concerning §741.112(a)(5) and §741.112(f)(5), change "is currently held" to "was held when the applicant completed the internship" for clarification.

Concerning §741.141(d) and (f), change "expired" to "expire" to correct publication error.

Concerning §741.161(k)(2), change "references" to "referenced" to correct publication error.

Concerning §741.191(d), delete "the" between "be" and "responsible" to correct publication error.

Concerning §741.192(b)(2), change "returned" to "return" to correct publication error.

Concerning §741.194(c), delete "the" between "that" and "public" to correct publication error.

The comments on the proposed rules received by the board during the comment period were submitted by the Texas Speech-Language-Hearing Association, several licensees, members of this board, and board staff. The commenters were neither for nor against the rules in their entirety; however, they expressed concerns, asked questions and suggested recommendations for change as discussed in the summary of comments. Texas Department of Health, Director for Vision and Hearing Screening, concurred with the proposed changes concerning §741.32 relating to Hearing Screening.

SUBCHAPTER A. INTRODUCTION

22 TAC §741.1, §741.2

The repeals are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008385
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER A. DEFINITIONS

22 TAC §741.1

The new section is adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Code.

§741.1. Definitions.

Unless the context clearly indicates otherwise, the words and terms below shall have the following meanings. Also, refer to the Texas Occupations Code, §401.001, for definitions of additional words and terms.

(1) Delegation - The supervisor of an assistant may delegate certain services to the assistant; however, the supervisor is ultimately responsible for all services provided.

(2) Ear specialist - A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the patient, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, and otorhinolaryngologists.

(3) Extended absence - More than two consecutive working days for any single continuing education experience.

(4) Extended recheck - Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(5) Health care professional - An individual required to be licensed or registered under Texas Occupations Code, Chapter 401, or any person licensed, certified, or registered by the state in a health-related profession.

(6) Hearing instrument - A device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

(7) Hearing screening - A manually administered individual pure-tone air conduction screening with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(8) Sale or purchase - Includes the sale, lease or rental of a hearing instrument to a member of the consuming public who is a user or prospective user of a hearing instrument.

(9) Used hearing instrument - A hearing instrument that has been worn for any period of time by a user. However, a hearing instrument shall not be considered "used" merely because it has been worn by a prospective user as a part of a bona fide hearing instrument evaluation conducted to determine whether to select that particular hearing instrument for that prospective user, if such evaluation has been conducted in the presence of the dispenser or a hearing instrument health professional selected by the dispenser to assist the buyer in making such a determination.

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 December 4, 2000.

TRD-200008386
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER B. THE BOARD

22 TAC §§741.11 - 741.14

The amendments and new sections are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008388

Elsa Cardenas-Hagan

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: December 24, 2000

Proposal publication date: July 21, 2000

For further information, please call: (512) 458-7236

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22 TAC §§741.13 - 741.26

The repeals are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008387

Elsa Cardenas-Hagan

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: December 24, 2000

Proposal publication date: July 21, 2000

For further information, please call: (512) 458-7236

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SUBCHAPTER C. SCREENING PROCEDURES

22 TAC §§741.31 - 741.33

The amendments and new rule are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008390

Elsa Cardenas-Hagan

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: December 24, 2000

Proposal publication date: July 21, 2000

For further information, please call: (512) 458-7236

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SUBCHAPTER C. TESTING PROCEDURES AND EQUIPMENT

22 TAC §741.33

The repeal is adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008389

Elsa Cardenas-Hagan

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: December 24, 2000

Proposal publication date: July 21, 2000

For further information, please call: (512) 458-7236

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SUBCHAPTER D. THE STANDARDS OF PROFESSIONAL AND ETHICAL CONDUCT

22 TAC §741.41

The repeal is adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008391

Elsa Cardenas-Hagan

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: December 24, 2000

Proposal publication date: July 21, 2000

For further information, please call: (512) 458-7236

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The new section is adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Code.

§741.41. Code of Ethics.

(a) A licensee or registrant shall:

(1) seek appropriate medical consultation whenever indicated;

(2) seek to identify competent, dependable referral sources for clients;

(3) maintain objectivity in all matters concerning the welfare of the client;

(4) terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services being provided; and

(5) provide accurate information to clients and the public about the nature and management of communicative disorders and about the profession and the services rendered.

(b) A licensee or registrant shall not:

(1) engage in the medical treatment of speech-language and hearing disorders;

(2) guarantee, directly or by implication, the results of any therapeutic procedures as follows:

(A) a reasonable statement of prognosis may be made; and

(B) caution must be exercised not to mislead clients to expect results that cannot be predicted from reliable evidence;

(3) delegate any service requiring professional competence of a licensee or registrant to anyone not licensed or registered for the performance of that service;

(4) provide services if the services can not be provided with reasonable skill or safety to the client;

(5) provide any services which create an unreasonable risk that the client may be mentally or physically harmed;

(6) engage in sexual contact, including intercourse, kissing or fondling, with a client or an assistant, intern, or student supervised by the licensee or registrant;

(7) use alcohol or drugs when the use adversely affects or could adversely affect the licensee's or registrant's provision of professional services;

(8) evaluate or treat speech, language, or hearing disorders solely by correspondence;

(9) reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community;

(10) participate in activities that constitute a conflict of professional interest which may include the following:

(A) the exclusive recommendation of a product that the individual owns or has produced;

(B) lack of accuracy in the performance description of a product a licensee or registrant has developed; or

(C) the restriction of freedom of choice for sources of services or products;

(11) use his or her professional relationship with a client, intern, assistant, or student to promote for personal gain or profit any item, procedure, or service unless the licensee or registrant has disclosed to the client, intern, assistant, or student the nature of the licensee's or registrant's personal gain or profit; and

(12) misrepresent his or her training or competence.

(c) A licensee or registrant shall fully inform clients of the:

(1) results, in writing, of an evaluation within 60 days;

(2) nature and possible effects of the services rendered; and

(3) nature and possible effects of activities if the client is participating in research or teaching activities.

(d) A licensee or registrant shall not present false, misleading, deceptive, or not readily verifiable information relating to the services of the licensee or registrant or any person supervised or employed by the licensee or registrant which includes, but is not limited to:

(1) use of professional or commercial affiliations in any way that would mislead clients or the public;

(2) presenting false, misleading, or deceptive information in connection with an application by the licensee or registrant for a license issued under the Texas Occupations Code, Chapter 401, or for employment to provide speech-language pathology or audiology services;

(3) presenting false, misleading, or deceptive information relating to the following:

(A) any advertisement, announcement, or presentation;

(B) any announcement of services;

(C) letterhead or business cards;

(D) commercial products; or

(E) billing statements;

(4) presenting false, misleading, or deceptive advertising that is not readily subject to verification includes advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(C) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(D) contains a testimonial;

(E) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(F) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(G) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

(H) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; and

(I) advertises or represents in the use of a professional name, a title, or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(e) A licensee or registrant shall maintain accurate records of professional services rendered as follows:

(1) records must be maintained for seven consecutive years;

(2) records are the responsibility and property of the entity or individual who owns the practice or the practice setting; and

(3) records created as a result of treatment in a school setting shall be maintained as part of the student's permanent school record.

(f) A licensee or registrant shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board by providing notification on:

(1) a sign prominently displayed in the primary place of business of each licensee; and

(2) a written document such as a written contract, a bill for service, or office information brochure provided by a licensee or registrant to a client or third party.

(g) A licensee or registrant shall bill a client or a third party only for the services actually rendered in the manner agreed to by the licensee or registrant and the client or the client's authorized representative and shall:

(1) provide, in plain language, a written explanation of the charges for speech- language pathology and/or audiology services previously made on a bill or statement for the client upon the written request of a client, a client's guardian, or a client's parent, if the client is a minor; and

(2) comply with the Health and Safety Code, §311.0025, which prohibits improper, unreasonable, or medically unnecessary billing by hospitals or health care professionals.

(h) A licensee or registrant shall inform the board of violations of this code of ethics or of any other provision of the chapter by:

(1) complying with any order relating to the licensee or registrant which is issued by the board;

(2) not aiding or abetting the practice of an unlicensed person when that person is required to have a license or registration under the Texas Occupations Code, Chapter 401;

(3) reporting in accordance with the Family Code, §261.101(b), if there is cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person;

(4) not interfering with a board investigation or disciplinary proceeding by willful misrepresentation of facts to the board or the board's designee or by the use of threats or harassment against any person; and

(5) cooperating with the board by furnishing required documents or papers and by responding to a request for information from or a subpoena issued by the board or the board's designee within 30 days of the request.

(i) A supervisor of an intern or assistant shall:

(1) ensure that all services provided are in compliance with this chapter and the Texas Occupations Code, Chapter 401, such as verifying:

(A) the intern or assistant holds a license;

(B) the supervisor has been approved by the board office;

(C) the scope of practice is appropriate; and

(D) the intern or assistant is qualified to perform the procedure;

(2) be responsible for all client services performed by the intern or assistant;

(3) provide appropriate supervision after the board office approved the supervisory arrangement; and

(4) limit the number of interns and assistants being supervised in order to assure that the appropriate level of service is provided to the client/patient in accordance with subsection (b)(4) of this section, §741.62(f) of this title (relating to Requirements for an Intern in Speech-Language Pathology License), §741.65(g)-(h) of this title (relating to Requirements for an Assistant in Speech-Language Pathology License), §741.82(f) of this title (relating to Requirements for an Intern in Audiology License), and §741.85(g)-(h) of this title (relating to Requirements for an Assistant in Audiology License). The supervisor shall be responsible for all clients/patients who are receiving services from the intern or assistant he or she is supervising.

(j) In addition to the provisions listed in subsection (i) of this section, a supervisor of an assistant shall:

(1) be responsible for evaluations, interpretation, and case management of the assistant's clients; and

(2) not designate anyone other than a licensed speech-language pathologist or intern in speech-language pathology to represent speech-language pathology to an Admission, Review, and Dismissal (ARD).

(k) A licensed intern or assistant shall abide by the decisions made by the supervisor relating to the intern's or assistant's scope of practice. In the event the supervisor requests that the intern or assistant violate this chapter; the Texas Occupations Code, Chapter 401; or any other law, the intern or assistant shall refuse to do so and immediately notify the board office and any other appropriate authority.

(l) A licensee or registrant shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage for or from any health care professional. The provisions of the Health and Safety Code, §161.091, concerning the prohibition of illegal remuneration apply to licensees.

(m) A licensee or registrant who provides direct patient care shall comply with the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of HIV or Hepatitis B virus by infected health care workers.

(n) A licensee or registrant shall be subject to disciplinary action by the board if the licensee or registrant is issued a public letter of

reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Texas Code of Criminal Procedure, Article 56.31, relating to the Crime Victims Compensation Act.

(o) A licensee's or registrant's renewal shall be subject to the Family Code, Chapter 232, concerning failure to pay child support.

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 December 4, 2000.

TRD-200008392
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE AND REGISTRATION OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §§741.61, 741.62, 741.64, 741.65, 741.67

The repeal is adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008393
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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22 TAC §§741.61 - 741.67

The amendments and new sections adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Code.

§741.61. Requirements for a Speech-Language Pathology License.

(a) An applicant for the speech-language pathology license shall meet the requirements set out in the Texas Occupations Code, §401.304 and §401.305, and this section.

(b) The graduate degree shall be completed at a college or university which has a program accredited by the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copies of transcripts shall verify the applicant completed the following with a grade of "C" or above:

(A) at least 36 semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least 24 semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology as follows:

(i) six graduate semester credit hours in speech disorders;

(ii) six graduate semester credit hours in language disorders; and

(iii) other graduate semester credit hours in courses that include information on the understanding, evaluation, treatment, and prevention of communication disorders across all age spans in a variety of disorders; and

(C) six semester credit hours shall be earned in the area of audiology as follows:

(i) three semester credit hours in hearing disorders and hearing evaluation; and

(ii) three semester credit hours in habilitative or rehabilitative procedures with individuals who have hearing impairment.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraphs (1)(B) and (1)(C) of this subsection.

(3) No more than six semester credit hours awarded graduate credit earned prior to the date the baccalaureate degree is granted are acceptable as meeting the requirement of paragraph (1)(B) of this subsection.

(4) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(5) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the board has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(6) An applicant who graduated from a college or university not accredited by the American Speech-Language Hearing Association Council on Academic Accreditation shall have the American Speech-Language-Hearing Association Clinical Certification

Board evaluate the course work and clinical experience earned to determine if acceptable. The applicant shall bear all expenses incurred during the procedure.

(c) An applicant shall complete at least 25 clock hours of supervised observation before completing the minimum of the following hours of supervised clinical experience, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned on or after November 10, 1993.

(d) An applicant shall obtain 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in speech-language pathology as set out in §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License).

(1) An individual shall be licensed under §741.62 of this title prior to the beginning of the supervised professional experience.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §741.62 of this title shall:

(A) be licensed in that other state, rather than Texas; or

(B) hold the American Speech-Language-Hearing Association certificate of clinical competence in speech-language pathology if the other state did not require licensing.

(e) An applicant shall pass the examination as referenced by §741.121 of this title (relating to Examination Administration) within:

(1) the past 10 years; and

(2) two years of the completion date of the internship referenced in subsection (d) of this section.

(f) In the event the applicant passed the examination referenced in subsection (e) of this section more than two years after the completion date of the internship, the applicant shall repeat the 36 weeks supervised internship before applying for the speech-language pathology license. The applicant shall obtain the intern license as required by §741.62 of this title prior to repeating the internship.

(g) An applicant who previously held the American Speech-Language-Hearing Association Certificate of Clinical Competence may have the certificate reinstated and apply for licensure under §741.63 of this title (relating to Waiver of Licensure for Speech-Language Pathologists).

§741.62. Requirements for an Intern in Speech-Language Pathology License.

(a) An applicant for the intern in speech-language pathology license shall meet the requirements set out in the Texas Occupations Code, §401.311, and §741.61(a)-(c) of this title (relating to Requirements for a Speech-Language Pathology License) within 10 years of the date of application for the intern license.

(b) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the board's designee. If an applicant is required to earn additional course work or continuing professional education hours, §741.193 of this title (relating to Formal Hearings; Surrender of License or Registration) shall not apply. The applicant may reapply for the license when the requirements of this section are met.

(c) An original or certified copy of the transcripts is required and shall be evaluated under §741.61(b) of this title.

(d) An applicant who successfully completed all academic and clinical requirements of §741.61 (a)-(c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit an original or certified copy of a letter from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(e) An applicant whose master's degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.61 (a)-(c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology with six hours in audiology.

(f) An intern plan and agreement of supervision form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the intern. The supervisor shall hold a valid Texas license in speech-language pathology and possess a master's degree with a major in one of the areas of communicative sciences and disorders.

(1) Approval from the board office shall be required prior to practice by the intern. The form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) when other supervisors are added.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the intern, the primary supervisor shall be identified and separate forms submitted by each supervisor.

(3) An intern may renew the license without submitting a new form but may not practice.

(4) In the event the supervisor ceases supervision of the intern, the intern shall stop practicing immediately.

(5) Should the intern practice without approval from the board office, disciplinary action shall be initiated against the intern. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(g) The internship shall:

(1) begin within four years after the academic and clinical experience requirements as required by subsection (a) of this section have been met;

(2) be completed within a maximum period of 36 months once initiated;

(3) consist of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in speech- language pathology. Full-time

employment is defined as a minimum of 30 hours per week in direct patient/client clinical work. Part-time equivalent is defined as follows:

(A) 0-15 hours per week--no credit will be given;

(B) 15-19 hours per week for over 72 weeks;

(C) 20-24 hours per week for over 60 weeks; or

(D) 25-29 hours per week for over 48 weeks;

(4) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(5) be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(A) six face-to-face observations per segment by the board approved supervisor of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six other monitoring activities per segment with the board approved supervisor which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; and

(6) not be initiated if other options to complete the supervisory process set out in paragraph (5) of this section are requested unless approval by the board's designee is granted. The supervisor shall provide a detailed plan of supervision, in writing, with the request.

(h) An applicant who does not meet the time frames defined in subsection (g)(1)-(2) of this section shall request an extension, in writing, explaining the reason for the request. The board's designee shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours, or passing the examination referenced in §741.121 of this title (relating to Examination Administration) is required.

(i) During each segment of the internship, the primary supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the speech-language pathology license is granted. The board may request a copy of this documentation.

(j) Prior to implementing changes in the internship, approval from the board office is required.

(1) If the intern changes his or her supervisor or adds additional supervisors, a current intern plan and agreement of supervision form shall be submitted by the new supervisor and approved by the board before the intern may resume practice. A report of completed internship form shall be completed by the past supervisor and intern and submitted to the board office upon completion of that portion of the internship. The board office shall evaluate the form and inform the intern of the results.

(2) If the intern changes his or her employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location.

(3) If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week.

(k) Any reference to the licensee's title shall state clearly that the license status is that of an intern in speech-language pathology.

(l) An intern who completed the 36 weeks of full-time, or its part-time equivalent, of supervised professional experience as defined in subsection (g) of this section and wishes to continue to practice, shall apply for either:

(1) a speech-language pathology license under §741.61 of this title if the intern passed the examination referenced in §741.121 of this title; or

(2) a temporary certificate of registration under §741.66 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) if the intern has not passed the examination referenced in §741.121 of this title.

(m) The intern may continue to practice under supervision if he or she holds a valid intern license while awaiting the processing of the speech-language pathology license or the temporary certificate of registration in speech-language pathology as follows:

(1) The current supervisor shall submit a signed statement agreeing to supervise the intern from the "Ending Date of Internship" as shown on the report of completed internship form until the intern receives either the speech-language pathology license or the temporary certificate of registration.

(2) If the intern changes supervisors, the new supervisor shall first submit the intern plan and agreement of supervision form and receive board approval before the intern may resume practice.

§741.65. Requirements for an Assistant in Speech-Language Pathology License.

(a) An applicant for an assistant in speech-language pathology license shall meet the requirements set out in the Texas Occupations Code, §401.312, and this section within 10 years of the date of application for the assistant license.

(b) An assistant is an individual who provides speech-language pathology support services to clinical programs under supervision of a licensed speech-language pathologist and meets the following requirements:

(1) possesses a baccalaureate degree with an emphasis in communicative sciences and disorders;

(2) acquired no fewer than 24 semester hours in speech-language pathology and/or audiology, at least 18 of which must be in speech-language pathology core curriculum and excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) earned no fewer than 25 hours of clinical observation in the area of speech- language pathology and 25 hours of clinical assisting experience in the area of speech-language pathology obtained within an educational institution or in one of its cooperating programs.

(c) The baccalaureate degree shall be completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of transcripts shall be submitted and reviewed as follows:

(A) only course work completed within the past 10 years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (b) of this section were earned more than 10 years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the board's designee. If an applicant is required to earn additional course work or continuing professional education hours, §741.193 of this title (relating to Formal Hearings; Surrender of License or Registration) shall not apply. The applicant may reapply for the license when the requirements of this section are met.

(d) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation and shall determine if the applicant satisfactorily completed 24 graduate hours in communicative sciences or disorders which may include some leveling hours.

(e) An applicant who has not acquired the hours referenced in subsection (b)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemptions in the Texas Occupations Code, Chapter 401, for an applicant to acquire the hours. The applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Material) and include a clinical deficiency plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the assistant with the training to acquire these hours shall submit:

(A) the supervisory responsibility statement form; and

(B) a clinical deficiency plan that shall include the following:

(i) name and signature of the assistant;

(ii) name, qualifications, and signature of the licensed speech- language pathologist trainer;

(iii) number of hours of observation and/or assisting experience lacking;

(iv) statement that the training shall be conducted under 100% direct, face-to-face supervision of the assistant; and

(v) list of training, consistent with subsection (h) of this section, that shall be completed.

(2) The board office shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The clinical deficiency plan shall be completed within 60 days of the issue date of the license or the assistant shall be considered to have voluntarily surrendered the license.

(4) Immediately upon completion of the clinical deficiency plan, the trainer identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the assistant's performance; and

(C) a signed statement that the assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, face-to-face supervision of the assistant. This statement shall specify the number of hours completed and verify completion of the training identified in the clinical deficiency plan.

(5) In addition to paragraph (4) of this subsection, the assistant shall submit an original signed statement listing the duties that an assistant may and may not perform and acknowledge understanding that the supervisory responsibility statement form shall be received and approved by board staff in order for the assistant to practice.

(6) Board staff shall evaluate the documentation required in paragraphs (4) and (5) of this subsection and inform the assistant and trainer if acceptable.

(7) An assistant may continue to practice under supervision of the trainer while the board office evaluates the documentation identified in paragraphs (4) and (5) of this subsection.

(8) In the event, another licensed speech-language pathologist shall supervise the assistant after completion of the clinical deficiency plan, a supervisory responsibility statement form shall be submitted to the board office seeking approval for the change in supervision. If the documentation required by paragraphs (4) and (5) of this subsection has not been received and approved by the board office, approval for the change in supervision shall not be granted.

(f) A supervisory responsibility statement form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the assistant.

(1) Approval from the board office shall be required prior to practice by the assistant. The form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) when other supervisors are added.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the assistant, the primary supervisor shall be identified and separate forms submitted by each supervisor.

(3) An assistant may renew the license but may not practice without submitting a new supervisory responsibility statement form.

(4) In the event the supervisor ceases supervision of the assistant, the assistant shall stop practicing immediately.

(5) Should the assistant practice without approval from the board office, disciplinary action shall be initiated against the assistant. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(g) A licensed speech-language pathologist shall assign duties and provide appropriate supervision to the assistant.

(1) Diagnostic contacts shall be conducted by the supervising licensed speech- language pathologist. This contact may include evaluation of the client.

(2) Following the diagnostic contact, the supervising speech-language pathologist shall determine whether the assistant has the competence to perform specific duties before delegating tasks.

(3) The supervising speech-language pathologist shall provide the minimum of no less than two hours per week, at least half of which is face-to-face supervision, at the location where the assistant is employed. This applies whether the assistant's practice is full or part-time.

(4) Indirect methods of supervision may include audio and/or video tape recording, telephone communication, numerical data, or other means of reporting.

(5) An exception to paragraph (3) of this subsection may be requested. The supervising speech-language pathologist shall submit a proposed plan of supervision for review by the board's designee. The plan shall be for not more than one year's duration and shall include:

(A) the name of the assistant;

(B) the name and signature of the supervisor;

(C) the proposed plan of supervision;

(D) the exact time frame for the proposed plan;

(E) the length of time the assistant has been practicing under the requestor's supervision; and

(F) the reason the request is necessary.

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the board's designee.

(7) Supervisory records shall be maintained by the licensed speech-language pathologist which verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the board.

(A) An assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the assistant has been appropriately trained and the assessments are conducted under the direction of the supervisor.

(B) An assistant may not conduct an evaluation which includes diagnostic testing, test and observation interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(h) Although the licensed supervising speech-language pathologist may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The licensed speech-language pathologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed speech-language pathologist need not be present when the assistant is completing the assigned tasks; however, the licensed speech-language pathologist shall document all services provided and the supervision of the assistant.

(2) The licensed speech-language pathologist shall keep job descriptions and performance records. Records shall be current and made available to the board within 30 days of the date of the board's request for such records.

(3) The assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed speech-language pathologist determines that the assistant has received the training and has the skill to accomplish that task, and the licensed speech-language pathologist provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant.

(4) Examples of duties which an assistant may be assigned by the speech-language pathologist who agreed to accept responsibility for the services provided by the assistant, provided appropriate training has been received, are to:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) implement the treatment program or the individual education plan (IEP) designed by the licensed speech-language pathologist;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests as defined by the board;

(F) maintain clinical records;

(G) prepare clinical materials; and

(H) participate with the licensed speech-language pathologist in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed speech-language pathologist.

(5) The assistant shall not:

(A) conduct evaluations even under supervision since this is a diagnostic and decision making activity;

(B) interpret results of routine tests;

(C) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(D) represent speech-language pathology at staff meetings or on an admission, review and dismissal (ARD);

(E) attend staffing meeting or ARD without the supervisor being present;

(F) design a treatment program or individual education plan (IEP);

(G) determine case selection;

(H) present written or oral reports of client information;

(I) refer a client to other professionals or other agencies;

(J) use any title which connotes the competency of a licensed speech-language pathologist; or

(K) practice as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the board office.

(i) Any reference to the licensee's title shall state clearly that the license status is that of an assistant in speech-language pathology.

(j) The board shall audit 10% of licensed assistants each month for compliance with this section and §741.41 of this title (relating to the Code of Ethics).

(1) The board shall notify an assistant by mail that he or she has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the licensed speech-language pathologist who agreed to accept responsibility for the services provided by the assistant shall mail the requested proof of compliance to the board.

(3) A licensee and supervisor shall comply with the board's request for documentation and information concerning compliance with the audit.

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 December 4, 2000.

TRD-200008394
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER F. REQUIREMENTS FOR LICENSURE AND REGISTRATION OF AUDIOLOGISTS

22 TAC §§741.81, 741.82, 741.84, 741.85, 741.87

The repeals are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008396
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7290

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22 TAC §§741.81 - 741.86

The new sections and amendments are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Code.

§741.81. Requirements for an Audiology License.

(a) An applicant for the audiology license shall meet the requirements set out in the Texas Occupations Code, §401.304 and §401.305, and this section.

(b) The graduate degree shall be completed at a college or university which has a program accredited by the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copies of transcripts shall verify the applicant completed the following with a grade of "C" or above:

(A) at least 36 semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least 24 semester credit hours acceptable toward a graduate degree shall be earned in the area of audiology as follows:

(i) six graduate semester credit hours in hearing disorders and hearing evaluation;

(ii) six graduate semester credit hours in habilitative/rehabilitative procedures with individuals who have hearing impairment; and

(iii) other graduate semester credit hours in courses that include information on hearing disorders, hearing evaluations, habilitative/rehabilitative procedures, and preventive methods including the study of auditory disorders and habilitative/rehabilitative procedures across the life span; and

(C) six semester credit hours shall be earned in the area of speech- language pathology as follows:

(i) three semester credit hours in speech disorders; and

(ii) three semester credit hours in language disorders.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraphs (1)(B) and (1)(C) of this subsection.

(3) No more than six semester credit hours awarded graduate credit earned prior to the date the baccalaureate degree is granted are acceptable as meeting the requirement of paragraph (1)(B) of this subsection.

(4) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(5) An applicant who possesses a master's degree with a major in speech- language pathology and is pursuing a license in audiology may apply if the board has an original transcript showing completion of a master's degree with a major in speech-language pathology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in audiology and would meet the academic and clinical experience requirements for a license as an audiologist.

(6) An applicant who graduated from a college or university not accredited by the American Speech-Language Hearing Association Council on Academic Accreditation shall have the American Speech-Language-Hearing Association Clinical Certification Board evaluate the course work and clinical experience earned to determine if acceptable. The applicant shall bear all expenses incurred during the procedure.

(c) An applicant shall complete at least 25 clock hours of supervised observation before completing the minimum of the following hours of supervised clinical experience, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned on or after November 10, 1993.

(d) An applicant shall obtain 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in audiology as set out in §741.82 of this title (relating to Requirements for an Intern in Audiology License).

(1) An individual shall be licensed under §741.82 of this title prior to the beginning of the supervised professional experience.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §741.82 of this title shall:

(A) be licensed in that other state, rather than Texas; or

(B) hold the American Speech-Language-Hearing Association certificate of clinical competence in audiology if the other state did not require licensing.

(e) An applicant shall pass the examination as referenced by §741.121 of this title (relating to Examination Administration) within:

(1) the past 10 years; and

(2) two years of the completion date of the internship referenced in subsection (d) of this section.

(f) In the event the applicant passed the examination referenced in subsection (e) of this section more than two years after the completion date of the internship, the applicant shall repeat the 36 weeks supervised internship before applying for the audiology license. The applicant shall obtain the intern license as required by §741.82 of this title prior to repeating the internship.

(g) An applicant who previously held the American Speech-Language-Hearing Association Certificate of Clinical Competence may have the certificate reinstated and apply for licensure under §741.83 of this title (relating to Waiver of Licensure for Audiologists).

§741.82. Requirements for an Intern in Audiology License.

(a) An applicant for the intern in audiology license shall meet the requirements set out in the Texas Occupations Code, §401.311, and §741.81 (a)-(c) of this title (relating to Requirements for an Audiology License) within 10 years of the date of application for the intern license.

(b) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of audiology to be evaluated by the board's designee. If an applicant is required to earn additional course work or continuing professional education hours, §741.193 of this title (relating to Formal Hearings; Surrender of License or Registration) shall not apply. The applicant may reapply for the license when the requirements of this section are met.

(c) An original or certified copy of the transcripts is required and shall be evaluated under §741.81(b) of this title.

(d) An applicant who has successfully completed all academic and clinical requirements of §741.81(a)-(c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit an original or certified copy of a letter from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(e) An applicant whose master's degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.81(a)-(c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of audiology with six hours in speech-language pathology.

(f) An intern plan and agreement of supervision form shall be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the intern. The supervisor shall hold a valid Texas license in audiology and possess a master's degree with a major in one of the areas of communicative sciences and disorders.

(1) Approval from the board office shall be required prior to practice by the intern. The form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) when other supervisors are added.

(2) In the event more than one licensed audiologist agrees to supervise the intern, the primary supervisor shall be identified and separate forms submitted by each supervisor.

(3) An intern may renew the license without submitting a new form but may not practice.

(4) In the event the supervisor ceases supervision of the intern, the intern shall stop practicing immediately.

(5) Should the intern practice without approval from the board office, disciplinary action shall be initiated against the intern. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(g) The internship shall:

(1) begin within four years after the academic and clinical experience requirements as required by subsection (a) of this section have been met;

(2) be completed within a maximum period of 36 months once initiated;

(3) consist of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in audiology. Full-time employment

is defined as a minimum of 30 hours per week in direct patient/client clinical work. Part-time equivalent is defined as follows:

(A) 0-15 hours per week--no credit will be given;

(B) 15-19 hours per week for over 72 weeks;

(C) 20-24 hours per week for over 60 weeks; or

(D) 25-29 hours per week for over 48 weeks;

(4) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(5) be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(A) six face-to-face observations per segment by the board approved supervisor of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six other monitoring activities per segment with the board approved supervisor which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; and

(6) not be initiated if other options to complete the supervisory process set out in paragraph (5) of this subsection are requested unless approval by the board's designee is granted. The supervisor shall provide a detailed plan of supervision, in writing, with the request.

(h) An applicant who does not meet the time frames defined in subsection (g)(1)-(2) of this section shall request an extension, in writing, explaining the reason for the request. The board's designee shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours or passing the examination referenced in §741.121 of this title (relating to Examination Administration) is required.

(i) During each segment of the internship, the primary supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the audiology license is granted. The board may request a copy of this documentation.

(j) Prior to implementing changes in the internship, approval from the board office is required.

(1) If the intern changes his or her supervisor or adds additional supervisors, a current intern plan and agreement of supervision form shall be submitted by the new supervisor and approved by the board before the intern may resume practice. A report of completed internship form shall be completed by the past supervisor and intern and submitted to the board office upon completion of that portion of the internship. The board office shall evaluate the form and inform the intern of the results.

(2) If the intern changes his or her employer but the supervisor and the number hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location.

(3) If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week.

(k) Any reference to the licensee's title shall state clearly that the license status is that of an intern in audiology.

(l) An intern who completed the 36 weeks of full-time, or its part-time equivalent, of supervised professional experience as defined in subsection (g) of this section and wishes to continue to practice, shall apply for either:

(1) an audiology license under §741.81 of this title if the intern passed the examination referenced in §741.121 of this title; or

(2) a temporary certificate of registration under §741.86 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) if the intern has not passed the examination referenced in §741.121 of this title.

(m) The intern may continue to practice under supervision if he or she holds a valid intern license while awaiting the processing of the audiology license or the temporary certificate of registration in audiology as follows:

(1) The current supervisor shall submit a statement agreeing to supervise the intern from the "Ending Date of Internship" as shown on the report of completed internship form until the intern receives either the audiology license or the temporary certificate of registration.

(2) If the intern changes supervisors, the new supervisor shall first submit the intern plan and agreement of supervision form and receive board approval before the intern may resume practice.

§741.84. Requirements for a Provisional Audiology License.

(a) An applicant for the provisional audiology license shall meet the requirements set out in the Texas Occupations Code, §401.308(a)-(e), and this section.

(b) An applicant who did not pass a state validated examination required for licensure in audiology shall be required to pass the examination referenced in §741.121 of this title (relating to Examination Administration) within the past ten years.

(c) An applicant shall submit proof as defined in §741.112(d) of this title (relating to Required Application Materials) and, if found acceptable, the provisional license shall be issued to expire in 180 days.

(d) To obtain the audiology license, the provisional license holder shall submit before expiration date of the provisional license documentation defined in either:

(1) Section 741.112(a)(3)-(6) of this title that all requirements set out in the Texas Occupations Code, §401.304 and §401.305, and §741.81 of this title (relating to Requirements for an Audiology License) have been met; or

(2) Section 741.112(c)(3) and (4) of this title if the American Speech-Language- Hearing Association certificate of clinical competence in speech-language pathology is acquired.

(e) The provisional license holder shall cease practicing if the documentation required by subsection (d) of this section is not received and approved by the board within 180 days of the issuance of the provisional license.

§741.85. Requirements for an Assistant in Audiology License.

(a) An applicant for an assistant in audiology license shall meet the requirements set out in the Texas Occupations Code, §401.312, and this section within 10 years of the date of application for the assistant license.

(b) An assistant is an individual who provides audiology support services to clinical programs under supervision of a licensed audiologist and meets the following requirements:

(1) possesses a baccalaureate degree with an emphasis in communicative sciences and disorders;

(2) acquired no fewer than 24 semester hours in speech-language pathology and/or audiology, at least 18 of which must be in audiology core curriculum and excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) earned no fewer than 25 hours of clinical observation in the area of audiology and 25 hours of clinical assisting experience in the area of audiology obtained within an educational institution or in one of its cooperating programs.

(c) The baccalaureate degree shall be completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of transcripts shall be submitted and reviewed as follows:

(A) only course work completed within the past 10 years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (b) of this section were earned more than 10 years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of audiology to be evaluated by the board's designee. If an applicant is required to earn additional course work or continuing professional education hours, §741.193 of this title (relating to Formal Hearings; Surrender of License or Registration) shall not apply. The applicant may reapply for the license when the requirements of this section are met.

(d) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation and shall determine if the applicant satisfactorily completed 24 graduate hours in communicative sciences or disorders which may include some leveling hours.

(e) An applicant who has not acquired the hours referenced in subsection (b)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemptions in the Texas Occupations Code, Chapter 401, for an applicant to acquire the hours. The applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Material) and include a clinical deficiency plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed audiologist who will provide the assistant with the training to acquire these hours shall submit:

(A) the supervisory responsibility statement form; and

(B) a clinical deficiency plan that shall include the following:

(i) name and signature of the assistant;

(ii) name, qualifications, and signature of the licensed audiologist trainer;

(iii) number of hours of observation and/or assisting experience lacking;

(iv) statement that the training shall be conducted under 100% direct, face-to-face supervision of the assistant; and

(v) list of training, consistent with subsection (h) of this section, that shall be completed.

(2) The board office shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The clinical deficiency plan shall be completed within 60 days of the issue date of the license or the assistant shall be considered to have voluntarily surrendered the license.

(4) Immediately upon completion of the clinical deficiency plan, the trainer identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the assistant's performance; and

(C) a signed statement that the assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, face-to-face supervision of the assistant. This statement shall specify the number of hours completed and verify completions of the training identified in the clinical deficiency plan.

(5) In addition to paragraph (4) of this subsection, the assistant shall submit an original signed statement listing the duties that an assistant may and may not perform and acknowledge understanding that the supervisory responsibility statement form shall be received and approved by board staff in order for the assistant to practice.

(6) Board staff shall evaluate the documentation in paragraphs (4) and (5) of this subsection and inform the assistant and trainer if acceptable.

(7) An assistant may continue to practice under supervision of the trainer while the board office evaluates the documentation identified in paragraphs (4) and (5) of this subsection.

(8) In the event, another licensed audiologist shall supervise the assistant after completion of the clinical deficiency plan, a supervisory responsibility statement form shall be submitted to the board office seeking approval for the change in supervision. If the documentation required by paragraphs (4) and (5) of this subsection has not been received and approved by the board office, approval for the change shall not be granted.

(f) A supervisory responsibility statement form shall be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the assistant.

(1) Approval from the board office shall be required prior to practice by the assistant. The form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) when other supervisors are added.

(2) In the event more than one licensed audiologist agrees to supervise the assistant, the primary supervisor shall be identified and separate forms submitted by each supervisor.

(3) An assistant may renew the license form but may not practice without submitting a new supervisory responsibility statement form.

(4) In the event the supervisor ceases supervision of the assistant, the assistant shall stop practicing immediately.

(5) Should the assistant practice without approval from the board office, disciplinary action shall be initiated against the assistant. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(g) A licensed audiologist shall assign duties and provide appropriate supervision to the assistant.

(1) Diagnostic contacts shall be conducted by the supervising licensed audiologist. This contact may include evaluation of the client.

(2) Following the diagnostic contact, the supervising audiologist shall determine whether the assistant has the competence to perform specific duties before delegating tasks.

(3) The supervising audiologist shall provide the minimum of no less than two hours per week, at least half of which is face-to-face supervision, at the location where the assistant is employed. This applies whether the assistant's practice is full or part-time.

(4) Indirect methods of supervision may include audio and/or video tape recording, telephone communication, numerical data, or other means of reporting.

(5) An exception to paragraph (3) of this subsection may be requested. The supervising audiologist shall submit a proposed plan of supervision for review by the board's designee. The plan shall be for not more than one year's duration and shall include:

(A) the name of the assistant;

(B) the name and signature of the supervisor;

(C) the proposed plan of supervision;

(D) the exact time frame for the proposed plan;

(E) the length of time the assistant has been practicing under the requestor's supervision; and

(F) the reason the request is necessary.

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising audiologist shall annually resubmit a request to be evaluated by the board's designee.

(7) Supervisory records shall be maintained by the licensed audiologist which verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the board.

(A) An assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the assistant has been appropriately trained and the assessments are conducted under the direction of the supervisor.

(B) An assistant may not conduct an evaluation which includes diagnostic testing, test and observation interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(h) Although the licensed supervising audiologist may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The licensed audiologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed audiologist need not be present when the assistant is completing the assigned tasks; however, the licensed audiologist shall document all services provided and the supervision of the assistant.

(2) The licensed audiologist shall keep job descriptions and performance records. Records shall be current and be made available to the board within 30 days of the date of the board's request for such records.

(3) The assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed audiologist determines that the assistant has received the training and has the skill to accomplish that task, and the licensed audiologist provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant.

(4) Examples of duties which an assistant may be assigned by the audiologist who agreed to accept responsibility for the services provided by the assistant, provided appropriate training has been received, are to:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) conduct aural habilitation or rehabilitation;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests as defined by the board;

(F) maintain clinical records;

(G) prepare clinical materials; and

(H) participate with the licensed audiologist in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed audiologist.

(5) The assistant shall not:

(A) conduct evaluations even under supervision since this is a diagnostic and decision making activity;

(B) interpret results of routine tests;

(C) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(D) represent audiology at staff meetings or on an admission, review and dismissal (ARD);

(E) attend staffing meeting or ARD without the supervisor being present;

(F) design a treatment program;

(G) determine case selection;

(H) present written or oral reports of client information;

(I) refer a client to other professionals or other agencies;

(J) use any title which connotes the competency of a licensed audiologist; or

(K) practice as an assistant in audiology without a valid supervisory responsibility statement on file in the board office.

(i) Any reference to the licensee's title shall state clearly that the license status is that of an assistant in audiology.

(j) An assistant may not engage in the fitting, dispensing or sale of a hearing instrument; however, an assistant who is licensed under the Texas Occupations Code, Chapter 402, may engage in activities as allowed by that law and is not considered to be functioning under his or her assistant license when performing those activities.

(k) The board will audit 10% of licensed assistants each month for compliance with this section and §741.41 of this title (relating to the Code of Ethics).

(1) The board shall notify an assistant by mail that he or she has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the licensed audiologist who agreed to accept responsibility for the services provided by the assistant shall mail the requested proof of compliance to the board.

(3) A licensee and supervisor shall comply with the board's request for documentation and information concerning compliance with the audit.

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 December 4, 2000.

TRD-200008395
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER G. REQUIREMENTS FOR DUAL LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND AUDIOLOGIST

22 TAC §741.91

The repeal is adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008397
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER G. REQUIREMENTS FOR DUAL LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND AN AUDIOLOGIST

22 TAC §741.91

The new section is adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Code.

§741.91. Requirements for Dual Licenses in Speech-Language Pathology and Audiology.

(a) An applicant for dual licenses in speech-language pathology and in audiology as referenced in the Texas Occupations Code, §401.302(d), shall meet the requirements set out in:

(1) Section 741.63 of this title (relating to a Waiver of Licensure for a Speech- Language Pathologist) and §741.83 of this title (relating to a Waiver of Licensure for an Audiologist); or

(2) Section 741.61 of this title (relating to Requirements for a Speech-Language Pathology License) and §741.81 of this title (relating to Requirements for an Audiology License) with the following exceptions.

(A) Instead of the number of semester credit hours of course work referenced in §741.61(b) of this title and §741.81(b) of this title, the applicant shall have completed:

(i) at least 42 semester credit hours in professional course work acceptable toward a graduate degree with at least 21 semester credit hours awarded graduate credit in speech-language pathology and at least 21 semester credit hours awarded graduate credit in audiology;

(ii) at least 30 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology as follows:

(I) at least six graduate semester credit hours in speech disorders; and

(II) at least six graduate semester credit hours in language disorders;

(iii) at least 30 semester credit hours acceptable toward a graduate degree in the area of audiology as follows:

(I) at least six graduate semester credit hours in hearing disorders and hearing evaluations; and

(II) at least six graduate semester credit hours in habilitative/rehabilitative procedures with individuals who have hearing impairment.

(B) Instead of the number of hours of supervised clinical observation and experience referenced in §741.61(c) of this title and §741.81(c) of this title, the applicant shall have completed at least:

(i) 25 credit hours of supervised observation in evaluation and treatment of children and adults with disorders of speech, language, or hearing prior to beginning 500 graduate credit hours of direct clinical experience; and

(ii) 500 minimum graduate credit hours of clinical experience with at least 250 credit hours in speech-language pathology under direction of a master's degreed licensed speech-language pathologist and at least 250 credit hours in audiology under direction of a master's degreed licensed audiologist.

(b) Academic credit for clinical experience cannot be used to satisfy the minimum requirements of at least 21 graduate semester credit hours in speech-language pathology and at least 21 graduate semester credit hours in audiology.

(c) Transcripts shall be evaluated as set out in either §741.61(b) of this title or §741.81(b) of this title.

(d) A speech-language pathology license and an audiology license shall be issued individually.

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 December 4, 2000.

TRD-200008398
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER H. APPLICATION PROCEDURES

22 TAC §§741.101 - 741.103

The repeals are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008399
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §§741.101 - 741.103

The new sections are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Code.

§741.103. Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments.

In accordance with the Texas Occupations Code, Chapter 401, a licensed audiologist or licensed intern in audiology registered to fit and dispense hearing instrument, shall comply with this section when testing hearing for the purpose of determining the need for amplification.

(1) The American National Standards Institute (ANSI) "ears covered" octave band criteria for permissible ambient noise levels during audiometric testing must be adhered to. The "ears covered" permissible ambient noise levels are shown on the chart. Figure: 22 TAC, §741.103(1)

(2) This requirement is best met when a stationary acoustical enclosure is utilized.

(3) A stationary acoustical enclosure is any fixed enclosed space in which an individual is located for the purpose of testing hearing to threshold. A stationary acoustical enclosure may also be known as an audiometric or hearing test booth, room, suite, area, or space.

(4) Procedures referenced in the Texas Occupations Code, §401.401, should be followed when testing outside of a stationary acoustical enclosure.

(A) Hearing testing that occurs in an area that does not meet the standard of a stationary acoustical enclosure for the purpose of determining the need for amplification is not considered a diagnostic or threshold measurement.

(B) In the event amplification is deemed necessary but verification measures cannot be completed in a stationary acoustical enclosure, instrumentation that is minimally affected by ambient noise, such as real ear measure, shall be utilized to assure the appropriate fit of the amplification.

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 December 4, 2000.

TRD-200008400
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER I. APPLICATION PROCEDURES

22 TAC §741.111, §741.112

The new sections are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Code.

§741.112. Required Application Materials.

(a) An applicant applying for a speech-language pathology or audiology license under §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) shall submit the following:

(1) a completed, original board application form including disclosure of the applicant's social security number and the applicant's dated signature notarized within the past 60 days;

(2) the application and initial license fee;

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language- Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) an original board course work and clinical experience form completed by the director or designee of the college or university attended which verifies the applicant has met the requirements established in §741.61(b)-(c) of this title or §741.81(b)-(c) of this title;

(5) an original board report of completed internship form completed by the applicant's supervisor and signed by both the applicant and the supervisor; however, if the internship was completed out-of-state, the supervisor shall also submit a copy of his or her diploma or transcript showing the master's degree in one of the areas of communicative sciences and disorders had been conferred and a copy of a valid license to practice in that state. If that state did not require licensure, the supervisor shall submit an original letter from the American Speech- Language-Hearing Association stating the certificate of clinical competence was held when the applicant completed the internship in addition to proof of a master's degree in communicative sciences and disorders; and

(6) an original or certified statement from the Educational Testing Service showing the applicant passed the examination described in §741.121 of this title (relating to Examination Administration) within the time period established in §741.61(e) or §741.81(e) of this title.

(b) An applicant applying for an intern in speech-language pathology license under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) or an intern in audiology license under §741.82 of this title (relating to Requirements for an Intern in Audiology License) shall submit the following:

(1) a completed, original board application form including disclosure of the applicant's social security number and the applicant's dated signature notarized within the past 60 days;

(2) the application and initial license fee;

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language- Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) if the master's degree has not been officially conferred, an original or certified copy of transcript(s) and a letter signed by the program director or designee at the university attended verifying the applicant successfully completed all requirements for the master's degree, and is only awaiting the date of next graduation for the degree to be conferred;

(5) an original board course work and clinical experience form completed by the director or designee of the college or university attended which verifies the applicant has met the requirements established in §741.61(b)-(c) of this title or §741.81(b)-(c) of this title; and

(6) a current, original board intern plan and agreement of supervision form completed by the supervisor and signed by both the applicant and the supervisor.

(c) An applicant who holds the American Speech-Language-Hearing Association certificate of clinical competence applying for licensure under §741.63 of this title (relating to Waiver of Licensure for Speech-Language Pathologists) or §741.83 of this title (relating to Waiver of Licensure for Audiologists) shall submit the following:

(1) a completed, original board application form including disclosure of the applicant's social security number and the applicant's dated signature notarized within the past 60 days;

(2) the application and initial license fee;

(3) an original or certified copy of a signed letter from the American Speech- Language-Hearing Association which verifies the applicant currently holds the certificate of clinical competence in the area in which the applicant has applied for license; and

(4) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant whose transcript

is in a language other than English shall submit an original evaluation form from an approved credentialling agency.

(d) An applicant applying for a speech-language pathology or audiology provisional license under §741.64 of this title (relating to Requirements for a Provisional Speech- Language Pathology License) or §741.84 of this title (relating to Requirements for a Provisional Audiology License) shall submit the following:

(1) a completed, original board application form including disclosure of the applicant's social security number and the applicant's dated signature notarized within the past 60 days;

(2) the provisional application and initial license fee;

(3) a copy of the licensing law and rules from the state of the applicant's previous residence;

(4) a copy of the applicant's license from another state;

(5) an original letter or form completed by that state's licensing board with board seal affixed which verifies:

(A) name and social security number of the applicant;

(B) whether the applicant holds a current valid license;

(C) the area of licensure;

(D) the date the license was issued;

(E) the date the license expires or expired;

(F) the licensure qualifications that were met by applicant;

(G) whether the applicant passed an examination required for state licensure and the name of the examination;

(H) whether the license had ever been revoked, canceled or suspended; and

(I) whether disciplinary proceedings were initiated;

(6) an original or certified statement from the Educational Testing Service which verifies the applicant passed the examination described in §741.121 of this title within the past 10 years if no examination is listed under paragraph (5)(G) of this subsection;

(7) a signed statement from an individual licensed by this board who will accept sponsorship of the applicant's practice unless the board approved a request to waive this requirement because it would constitute a hardship; and

(8) once documentation required in this paragraph has been received and a provisional license issued, the provisional license holder shall submit additional documentation as required by §741.64(d) of this title (relating to Requirements for a Provisional Speech- Language Pathology License) or §741.84(d) of this title (relating to Requirements for a Provisional Audiology License) in order to receive a full license.

(e) An applicant applying for an assistant in speech-language pathology license under §741.65 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License) or an assistant in audiology license under §741.85 of this title (relating to Requirements for an Assistant in Audiology License) shall submit the following:

(1) a completed, original board application form including disclosure of the applicant's social security number and the applicant's dated signature notarized within the past 60 days;

(2) the application and initial license fee;

(3) a current, original board supervisory responsibility statement form completed by the licensed supervisor who agrees to accept responsibility for the services provided by the assistant and signed by both the applicant and the supervisor;

(4) an original or certified copy of transcript(s) of relevant course work which also verifies that the applicant possesses a baccalaureate degree with an emphasis in speech- language pathology and/or audiology;

(5) an original board clinical observation and experience form completed by the director or designee of the college or university training program verifying the applicant completed the requirements set out in §741.65 (b)(3) of this title or §741.85 (b)(3) of this title; and

(6) for an applicant who did not obtain the hours referenced in paragraph (5) of this subsection, a clinical deficiency plan to obtain the hours.

(f) An applicant applying for a speech-language pathology temporary certificate of registration under §741.66 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) or an audiology temporary certificate of registration under §741.86 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) shall submit the following:

(1) a completed, original board application form including disclosure of the applicant's social security number and the applicant's dated signature notarized within the past 60 days;

(2) the temporary certificate of registration fee;

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language- Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) an original board course work and clinical experience form completed by the director or designee of the college or university attended which verifies the applicant has met the requirements established in §741.61 (b)-(c) of this title or §741.81 (b)-(c) of this title;

(5) an original board report of completed internship form completed by the applicant's supervisor and signed by both the applicant and the supervisor; however, if the internship was completed out-of-state, the supervisor shall also submit a copy of his or her diploma or transcript showing the master's degree in one of the areas of communicative sciences and disorders had been conferred and a copy of a valid license to practice in that state. If that state did not require licensure, the supervisor shall submit an original letter from the American Speech- Language-Hearing Association stating the certificate of clinical competence was held when the applicant completed the internship in addition to proof of a master's degree in communicative sciences and disorders; and

(6) an applicant who completed the internship in another state and graduated from a college or university with a program not accredited by the American Speech-Language- Hearing Association, shall submit an original, signed letter from the American Speech-Language- Hearing Association stating the Clinical Certification Board accepted the course work, clinical practicum and the clinical fellowship year.

(g) A licensed audiologist or licensed intern in audiology who wishes to fit and dispense hearing instruments under §741.101 of this title (relating to Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments) shall submit the following:

(1) a completed, original board registration form including disclosure of the applicant's social security number and the applicant's dated signature notarized within the past 60 days; and

(2) the registration fee to fit and dispense hearing instruments.

(h) An applicant for dual licenses in speech-language pathology and audiology under §741.91 of this title (relating to Requirements for Dual Licenses in Speech-Language Pathology and Audiology) shall submit separate documentation and fees as follows:

(1) a completed, original board application form including disclosure of the applicant's social security number and the applicant's dated signature notarized within the past 60 days requesting both licenses;

(2) two separate application and initial license fees; and

(3) documentation listed in subsection (a)(3)-(6) of this section or subsection (c)(3)-(4) of this section.

(i) An applicant who currently holds one license and wishes to obtain dual licenses shall submit the following:

(1) a completed, original board application form including disclosure of the applicant's social security number and the applicant's dated signature notarized within the past 60 days requesting the other license;

(2) the application and initial license fee; and

(3) documentation listed in subsection (a)(3)-(6) of this section or subsection (c)(3)-(4) of this section.

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 December 4, 2000.

TRD-200008402
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER I. LICENSURE EXAMINATIONS

22 TAC §§741.121 - 741.123

The repeals are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008401
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER J. LICENSURE EXAMINATIONS

22 TAC §741.121

The new section is adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008404
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER J. LICENSING AND REGISTRATION PROCEDURES

22 TAC §§741.141 - 741.143

The repeals are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008403
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER K. ISSUANCE AND DISPLAY OF LICENSE AND REGISTRATION

22 TAC §741.141, §741.412

The new sections are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Code.

§741.141. Issuance of License and Registration.

(a) The board shall issue an initial license to an applicant for a speech-language pathology, audiology, assistant in speech-language pathology, or assistant in audiology license after the fee, forms, and other documentation have been received and approved by the board or board staff. The effective date shall be the postmarked date of the last item required for approval. The expiration date shall be determined as follows.

(1) An applicant approved for license within three months of the applicant's birth month shall be issued a license to expire on the last day of the birth month that is one year past the applicant's next birth month.

(2) An applicant approved for less than 12 months, but for more than three months, shall be issued a license to expire upon the last day of the applicant's next birth month.

(b) The board shall issue an initial license to an applicant for an intern in speech- language pathology or an intern in audiology license after the fee, forms, and other documentation have been received and approved by the board or board staff. The effective date shall be the postmarked date of the last item required for approval. The license shall expire one year past the effective date.

(c) The board shall issue an initial registration to fit and dispense hearing instruments to a licensed audiologist or licensed intern in audiology after the form and fee have been received and approved by the board or board staff. The effective date shall be the postmarked date of the last item required for approval. The registration shall expire on the same date as that of the audiology or intern in audiology license.

(d) The board shall issue a provisional license to an applicant in speech-language pathology or a provisional license in audiology after the fee, forms, and other documentation have been received and approved by the board or board staff. The effective date shall be the postmarked date of the last item required for approval. The license shall expire 180 days past the effective date.

(e) The provisional license holder shall submit proof of having met the requirements for either the speech-language pathology or audiology license prior to the expiration date of the provisional license and an initial speech-language pathology or audiology license shall be issued. The effective and expiration dates shall be the same as defined in subsection (a) of this section.

(f) The board shall issue a temporary certificate of registration in speech-language pathology or a temporary certificate of registration in audiology to an applicant after the fee, forms, and other documentation have been received and approved by the board or board staff. The effective date shall be the postmarked date of the last item required for approval. The registration shall expire eight weeks after the next scheduled examination as required by §741.121 of this title (relating to Examination Administration).

(g) An applicant of a license or registration issued under subsections (a)-(c) of this section shall receive the following:

(1) a license or registration;

(2) a certificate; and

(3) an ID card.

(h) An applicant of a license or registration issued under subsections (d) or (f) of this section shall receive a certificate.

(i) Licenses and registrations issued under subsections (a)-(c) of this section may be renewed as required by §741.161 of this title (relating to Renewal Procedures).

(j) A license, certificate, or registration issued by the board remains the property of the board.

(k) The board shall issue a duplicate license, certificate, and registration upon written request and payment of the duplicate fee.

(l) The board is not responsible for lost, misdirected, or undelivered correspondence, including forms and fees, if sent to the address last reported to the board.

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 December 4, 2000.

TRD-200008406
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER K. LICENSE AND REGISTRATION RENEWAL

22 TAC §§741.161 - 741.166

The repeals are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to

adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008405
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER L. LICENSE AND REGISTRATION RENEWAL

22 TAC §§741.161 - 741.165

The new sections are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Code.

§741.161. Renewal Procedures.

(a) The Texas Occupations Code, Subchapter H, provides for the renewal of a license. A license or registration issued under §741.141 (a)-(c) of this title (relating to Issuance of License and Registration) and to the holder of the limited license to practice speech-language pathology in the public schools issued under the Texas Occupations Code, §401.314, is subject to renewal upon expiration if a licensee or registrant wishes to practice under the Texas Occupations Code, Chapter 401, and this chapter.

(b) A license or registration issued under §741.141 (d) and (f) of this title cannot be renewed.

(c) The board office shall mail a renewal form to each licensee approximately 45 days prior to the expiration date of the license. The board is not responsible for lost, misdirected, or undelivered renewal forms if sent to the address last reported to the board.

(d) A licensee shall have acquired approved continuing education hours as defined in §741.162 of this title (relating to Requirements for Continuing Professional Education) in order to renew a license. Any continuing education hours earned before the original effective date of the license being renewed are not acceptable.

(e) A licensee or registrant is responsible for submitting the required fee, forms, and other documentation prior to the expiration date of the license. The postmarked date is the date of mailing.

(f) A licensee is required to provide current address, telephone number, and employment information. Corrections may be made on the renewal form or by submitting the current information, in writing, and include some identifying information, such as the license number or the social security number. A request to change the name currently on record must be submitted, in writing, with a copy of a divorce decree, marriage certificate, or social security card showing the new name.

(g) The board office shall not consider a license to be renewed until the following has been received and found acceptable:

(1) completed, dated, and signed renewal form, including acknowledgment of having earned the required continuing professional education hours;

(2) license renewal fee and registration to fit and dispense hearing instruments fee, if applicable; and

(3) if selected for audit as defined in subsection (o) of this section, the record of continuing education hours earned/used/available/dropped form, referred to as the CE log, which covers at least the past three renewal periods and verification of approved continuing education hours.

(h) An intern shall submit the following for license renewal:

(1) the items listed in subsection (g) of this section;

(2) the report of completed internship form for the intern's past experience;

(3) the intern plan and agreement of supervision form for the intern's upcoming experience unless the intern is currently not practicing. In that event, the intern shall submit a signed statement explaining the reason for not practicing.

(i) An assistant shall submit the following for license renewal:

(1) the items listed in subsection (g) of this section; and

(2) the supervisory responsibility statement form unless the assistant is currently not practicing. In that event, the assistant shall submit a signed statement explaining the reason for not practicing.

(j) An audiologist or intern in audiology registered to fit and dispense hearing instruments shall renew the registration at the same time as when renewing the audiology or intern in audiology license by responding to the appropriate questions on the renewal form and submitting the registration fee.

(1) An audiologist or intern in audiology who no longer wishes to fit and dispense hearing instruments shall notify the board, in writing, of this decision when renewing the audiology or intern in audiology license.

(2) An audiologist or intern in audiology who later wishes to fit and dispense hearing instruments shall first submit the completed registration form and fee. If this request is approved after expiration of the grace period of the fitting and dispensing of hearing instruments registration, the original effective date of the registration shall be changed to reflect the postmarked date of the last item required for approval.

(k) A limited license to practice speech-language pathology in the public schools issued under the Texas Occupations Code, §401.314, shall be renewed as follows.

(1) The applicant who met the requirements referenced in the Texas Occupations Code, §401.314(a), shall renew the license under subsection (g) of this section.

(2) The applicant who met the requirements referenced in the Texas Occupations Code, §401.314(b), shall renew the license under subsection (g) of this section if an original transcript showing completion of 12 semester hours of course work in communicative sciences

and disorders with a grade of at least a "C" or above as required by the Texas Occupations Code, §401.314(c), is also submitted.

(l) An individual who meets the requirements set out in the Texas Occupations Code, §401.353, and wishes to renew the expired license shall submit his or her request, in writing, with the following:

(1) an original letter from the licensing board where he or she currently holds a valid license verifying:

(A) the area in which the license was issued;

(B) the date of issue;

(C) the expiration date of the license; and

(D) whether derogatory information is on record;

(2) a fee equal to the examination fee; and

(3) proof of having earned at least ten approved continuing education hours during the preceding 12 months.

(m) A licensee may renew the license under the Texas Occupations Code, §401.354, after expiration of the 60-day grace period without a late renewal penalty fee being assessed due to a medical hardship whether or not the licensee met the requirements of §741.162 of this title. If the following is submitted and found acceptable by the board office, the license shall be renewed; however the original effective date of the license shall be changed to reflect the postmarked date of the last item required for approval:

(1) a signed statement requesting renewal due to medical hardship;

(2) an original letter signed by the licensee's physician stating the licensee was unable to practice for at least six months during the renewal period because of a physical or mental disability;

(3) the completed, dated, and signed renewal form;

(4) any approved continuing education hours earned during the renewal period; and

(5) the license renewal fee and the registration to fit and dispense hearing instruments fee, if applicable.

(n) A licensee may petition the board if the licensee does not meet the requirements of subsection (m) of this section but believes he or she has a valid medical reason for the late renewal. The petition shall be reviewed by the board's designee.

(o) The board shall monitor a licensee's compliance with the continuing education requirements by the use of a random audit. In the event the licensee has been selected for an audit to verify compliance with the continuing education requirement as described in §741.162 of this title, the license shall not be renewed until the licensee submits acceptable proof of having earned the required continuing education hours. If this documentation is not received or found unacceptable, the licensee shall be notified by the board office of the deficiency.

(p) The board shall deny renewals pursuant to the Texas Education Code, §57.491, concerning defaults on guaranteed student loans.

(q) The board shall deny renewals pursuant to the Family Code, Chapter 232, concerning failure to pay child support.

(r) If all conditions required for renewal are met prior to expiration of the 60-day grace period, the board shall issue a renewed license and registration to fit and dispense hearing instruments, if applicable.

(s) If the licensee has not completed the renewal process upon expiration of the 60-day grace period, he or she shall cease practicing. The licensee shall then renew his or her license in accordance with §741.164 of this title (relating to Late Renewal of a License) if he or she wishes to practice.

(t) An audiologist or intern in audiology registered to fit and dispense hearing instruments shall not do so if the audiology or intern in audiology license has not been renewed prior to expiration of the 60-day grace period or if the license has been placed in the inactive status as set out in §741.163 of this title (relating to Inactive Status).

(u) A suspended license is subject to expiration and may be renewed as provided in this subchapter; however, the renewal does not entitle the licensee to engage in the licensed activity or in any other activity or conduct in violation of the order or judgement by which the license was suspended, until such time as the license if fully reinstated.

(v) A license revoked on disciplinary grounds shall not be renewed; however, the license may be reinstated under the Texas Occupations Code, §401.457. The former licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect, plus the late renewal penalty fee, if any, accrued since the time of the license revocation.

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 December 4, 2000.

TRD-200008408
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER L. FEES AND PROCESSING PROCEDURES

22 TAC §741.181, §741.182

The repeals are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008409

Elsa Cardenas-Hagan

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: December 24, 2000

Proposal publication date: July 21, 2000

For further information, please call: (512) 458-7236

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SUBCHAPTER M. FEES AND PROCESSING PROCEDURES

22 TAC §741.181, §741.182

The new sections are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008410

Elsa Cardenas-Hagan

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: December 24, 2000

Proposal publication date: July 21, 2000

For further information, please call: (512) 458-7236

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SUBCHAPTER M. DENIAL, PROBATION, SUSPENSION, OR REVOCATION OF LICENSURE OR REGISTRATION

22 TAC §§741.191 - 741.201

The repeals are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008411

Elsa Cardenas-Hagan

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: December 24, 2000

Proposal publication date: July 21, 2000

For further information, please call: (512) 458-7236

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SUBCHAPTER N. DENIAL, PROBATION, SUSPENSION, OR REVOCATION OF LICENSURE OR REGISTRATION

22 TAC §§741.191 - 741.195

The new sections are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the Code.

§741.191. Basis for Denial, Probation, Suspension, or Revocation of a License or Registration.

(a) The board may deny issuance of a license or initiate disciplinary action as defined in the Texas Occupations Code, §§401.451, 401.453, 401.458, and 401.459.

(b) The complaints committee shall consider the following if an applicant, licensee, or registrant has a criminal conviction:

(1) whether the conviction directly relates to the duties and responsibilities of a speech-language pathologist, audiologist, intern or assistant by:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a licensee or registration to be a speech-language pathologist, audiologist, intern or assistant;

(C) the extent to which a license or registration might afford an opportunity to repeat the criminal activity in which the individual had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a speech-language pathologist, audiologist, intern or assistant;

(2) the extent and nature of the person's past criminal activity;

(3) the age of the person at the time of the commission of the crime;

(4) the amount of time that has elapsed since the person's last criminal activity;

(5) the conduct and work activity of the person prior to and following the criminal activity;

(6) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(7) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community

where the person resides; and any other persons in contact with the convicted person.

(c) The board may deny an application or revoke a license or registration upon felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision. The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to perform or to be unfit for licensure or registration:

(1) the misdemeanor involving a violation of the Texas Occupations Code, Chapter 401;

(2) a conviction relating to deceptive business practices;

(3) a conviction relating to Medicare or Medicaid fraud;

(4) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child;

(H) injury to an elderly person;

(I) child abuse or neglect;

(J) tampering with a governmental record;

(K) forgery;

(L) perjury;

(M) failure to report abuse;

(N) bribery;

(O) harassment; or

(P) insurance claim fraud under the Texas Penal Code, §32.55;

(5) a conviction relating to delivery, possession, manufacturing, or use of a controlled substance, dangerous drug, or narcotic; or

(6) other misdemeanors or felonies, including convictions under the Texas Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or registrant or unfit for licensure or registration if action by the board will promote the intent of this chapter; the Texas Occupations Code, Chapter 401; and Texas Occupations Code, Chapter 53, (concerning Consequences of Criminal Conviction).

(d) The applicant, licensee or registrant shall be responsible to the extent possible to secure and provide to the board the recommendations of the prosecution, law enforcement, and correctional authorities; furnish proof in such form as may be required by the board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(e) The board shall suspend the license or registration upon receipt of a final court or attorney general's order suspending a license due to failure to pay child support.

(f) An application or renewal request may be denied if the applicant's license to practice speech-language pathology or audiology in another state or jurisdiction has been suspended, revoked, or otherwise restricted by the licensing entity in that state or jurisdiction for reasons relating to the applicant's professional competence or conduct which could adversely affect the health and welfare of a client.

(g) The board shall have the authority to obtain from the Texas Department of Public Safety or from a local law enforcement agency the record of any conviction of any person applying for or holding a license or a registration from the board.

§741.192. Procedures for Filing a Complaint and Denying, Suspending, or Revoking a License or Registration.

(a) In accordance with the Texas Occupations Code, §§401.251-401.253, the board shall investigate complaints filed against a licensee, registrant, or other person alleging violations of this chapter or the Texas Occupations Code, Chapter 401.

(b) An individual shall report a complaint by notifying the executive secretary, 1100 West 49th Street, Austin, Texas 78756-3183, telephone 1-800-942-5540 or (512) 834-6627.

(1) The initial notification of a complaint may be in writing, by telephone, or by personal visit to the board office.

(2) If the complainant did not submit an official complaint form as required by the Texas Occupations Code, §401.203, when initially notifying the board, the form shall be mailed. The complainant shall complete and return the form to the board office with any supporting documentation.

(c) The categories of complaints may include:

(1) practicing without a license;

(2) violation of the Code of Ethics;

(3) practicing without appropriate supervision, if required; or

(4) violation of any other law or rule enforced by the board.

(d) The executive secretary or designee:

(1) may notify the alleged violator of the complaint and request a written response within 30 days;

(2) shall collect all information related to the complaint and forward to the Complaints Committee for review;

(3) shall determine whether the complaint fits within the category of a serious complaint affecting health or safety of clients or other persons; and

(4) shall maintain a complaint tracking system.

(e) The complaints committee or designee may request a formal investigation.

(1) The investigation may be conducted by an assigned Texas Department of Health investigator.

(2) A private investigator may be used only if the Texas Department of Health's investigators available to the board have a conflict of interest.

(3) The investigator shall always attempt to contact the complainant to discuss the complaint.

(f) After the investigation has been completed, the investigator shall submit his or her findings to the executive secretary or designee who shall then forward the report to the complaints committee. The

written investigative report shall set out all pertinent facts obtained during the investigation and may include supporting documentation.

(g) If the complaints committee determines that there are insufficient grounds to support or act upon the complaint, the committee may dismiss the complaint and give written notice of the dismissal, explaining why this action was taken, to the complainant and the respondent. The committee will report to the board that the complaint was dismissed and the reason for dismissal.

(h) If the complaints committee determines that a violation exists and that the violation is not a serious complaint affecting the health and safety of clients or other persons, the committee may resolve the complaint by issuing a cease and desist or warning letter to the respondent to correct the violation. If the complaints committee determines that a reprimand should be issued, the committee shall make that recommendation to the board. Section 741.193 of this title (relating to Formal Hearings; Surrender of License or Registration) shall not apply to this subsection.

(i) If the complaints committee determines that there are sufficient grounds to support the complaint, the committee shall:

(1) notify the respondent of the results of the investigation and the proposed disciplinary action by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension;

(2) give the respondent an opportunity, as described in the notice, to show compliance with all requirements of the Texas Occupations Code, Chapter 401, and this chapter; and

(3) within 10 days of the respondent's receipt of the notice, which is presumed to occur on the 10th day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt, the respondent may:

(A) request a hearing before an administrative law judge;

(B) request an informal settlement conference;

(C) surrender the license; or

(D) enter into an agreed order to suspend or revoke the license or accept probated suspension or other disciplinary action.

(j) If denial of a license is proposed, the board shall give written notice that the applicant shall request, in writing, a formal hearing within 10 days of receipt of the notice, or the right to a hearing shall be waived and the license or registration shall be denied. The notice shall include the reason for denial, if applicable. Receipt of the notice is presumed to occur on the 10th day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt.

(k) If a respondent does not respond as required by subsection (i) or (j) of this section, the formal hearing is deemed to be waived, and the board shall enter a default order as defined in §741.193 of this title. Receipt of the notice is presumed to occur on the 10th day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt.

(l) Following due process as defined in §741.193 of this title, the complaints committee shall recommend to the board that a license or registration be denied, revoked, suspended, or that other appropriate action as authorized by law be taken.

(m) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, the executive secretary shall immediately determine if the board has issued a license or registration to the individual named on the order. If a license or registration has been issued, the executive secretary shall:

(1) record the suspension of the license or registration in the board's records;

(2) report the suspension as appropriate;

(3) demand the surrender of the suspended license;

(4) implement the terms of a final court or attorney general's order suspending a license without additional review or hearing;

(5) provide notice as appropriate to the licensee or to others concerned with the license; and

(6) not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Texas Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(n) A licensee or registrant who is the subject of a final court or attorney general's order suspending his or her license under subsection (m) of this section shall:

(1) not be entitled to a refund for any fee paid to the board;

(2) comply with the normal renewal procedures in the Texas Occupations Code, Chapter 401, and this chapter if a suspension overlaps a license renewal period; however, the license will not be renewed until conditions stated in paragraph (4) of this subsection are met;

(3) be liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board if he or she continues to practice or represent himself or herself as a speech-language pathologist or audiologist after the issuance of a court or attorney general's order suspending the license; and

(4) pay a reinstatement fee set out in §741.181 of this title (relating to Schedule of Fees) prior to issuance of the license if, upon receipt of a court or attorney general's order vacating or staying an order suspending a license, the licensee or registrant is otherwise qualified for the license or registration.

(o) If the board suspends a license or registration, the suspension shall remain in effect until the board determines that the reason for the suspension no longer exists or for the period of time stated in the order.

(p) If a suspension overlaps a license or registration renewal date, the individual whose license or registration is suspended may comply with the renewal procedures in this chapter; however, the board shall not renew the license or registration until the board determines that the reason for the suspension no longer exists, the period of suspension is completed, or the licensee is complying with the conditions of the probation.

(q) If a license or registration suspension is probated, the board may require the license or registration holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license or registration holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(r) The executive secretary shall monitor each license or registration against whom a board order is issued to ascertain that the licensee performs the required acts. Any failure to meet the conditions shall be reported to the complaints committee for review. The complaints committee may consider more severe disciplinary proceedings if non-compliance occurs.

(s) Upon revocation, suspension, or non-renewal, a licensee or registrant shall return his or her license, certificate or registration to the board.

(t) A license or registration may be reinstated as required by the Texas Occupations Code, §401.457.

(u) If the board denies an initial license, renewal, or registration request, a person may reapply for a license or registration, if applicable, by complying with the then-existing requirements and procedures for application. The board may refuse to issue a license or registration if the reason for the denial continues to exist.

§741.194. Informal Disposition or Proceedings.

(a) Informal disposition of any complaint or contested case involving a licensee, registrant, or an applicant for licensure or registration may be made through an informal settlement conference held to determine whether an agreed settlement order may be approved in accordance with the Texas Occupations Code, §401.455.

(b) Procedures established in §741.193 of this title (relating to Formal Hearings; Surrender of License or Registration) shall not apply. An informal settlement conference shall not be a prerequisite to a formal hearing.

(c) The provisions of this section shall apply if the executive secretary or the complaints committee of the board determines that public interest might by served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing.

(d) A licensee, registrant, or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive secretary.

(e) A licensee's or registrant's opportunity for an informal conference under this section shall satisfy the requirement of the Administrative Procedure Act, Texas Government Code, §2001.054(c).

(1) If the executive secretary determines that an informal conference shall not be held, the executive secretary shall give written notice to the licensee, registrant, or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the licensee, registrant, or applicant shall be given the opportunity to show, in writing, and as described in the notice, compliance with all requirements of the Texas Occupations Code, Chapter 401, and this chapter.

(2) The complainant shall be sent a copy of the written notice. The complainant shall be informed that he or she may also submit a written statement to the board office.

(f) If it is agreed that an informal settlement conference should be held, the executive secretary or designee shall:

(1) decide upon the time, date, and place; and

(2) provide written notice to the licensee, registrant, or applicant or to the licensee's, registrant's, or applicant's legal counsel.

(g) The notice of the informal settlement conference, which includes the time, date, and place of the conference, shall be sent with a copy of this section of the board's rules no less than 10 days prior to the date of the conference by certified mail, return receipt requested, to the last known address of the licensee, registrant, or applicant. Receipt of the notice is presumed to occur on the 10th day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt. The 10 days shall begin on the date of mailing or delivery. The licensee, registrant, or applicant may waive the 10 day notice requirement.

(h) During the conference these procedures shall apply:

(1) the licensee, registrant, or applicant may be represented by legal counsel;

(2) the licensee, registrant, or applicant may appear and testify or may submit a written statement for consideration;

(3) the licensee, registrant, or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;

(4) a member of the complaints committee may be present;

(5) the board's legal counsel shall be present;

(6) the licensee's, registrant's, or applicant's, attendance and participation is voluntary;

(7) the complainant and any client involved in the alleged violations may be present; and

(8) the settlement conference shall be canceled if the licensee, registrant, or applicant notifies the executive secretary or the board's legal counsel that he or she or his or her legal counsel will not attend.

(i) The executive secretary or designee shall notify the complainant if the conference is canceled.

(j) Access to the board's investigative file may be prohibited or limited in accordance with the law relating to open records, Texas Government Code, Chapter 552, and the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Article 4512, §24A.

(k) At the discretion of the executive secretary or a complaints committee member, a tape recording may or may not be made of none or all of the settlement conference.

(l) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each settlement conference. The complaints committee member or executive secretary may call upon the attorney at any time for assistance in the settlement conference.

(m) The complaints committee member, executive secretary, or board's legal counsel shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee or registrant, the licensee's or registrant's attorney, board staff, and board's legal counsel.

(n) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(o) The licensee or registrant, the licensee's or registrant's attorney, complaints committee member, board staff, and board's legal counsel may:

(1) question witnesses;

(2) make relevant statements;

(3) present statements of persons not in attendance; and

(4) present such other evidence as may be appropriate.

(p) The licensee, registrant, or applicant shall be afforded the opportunity to make statements that are material and relevant.

(q) At the conclusion of the settlement conference, the complaints committee member or executive secretary may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Texas Occupations Code, Chapter 401. The committee member may also:

(1) conclude that the board lacks jurisdiction;

(2) conclude that a violation of the Occupations Code, Chapter 401, or this chapter has not been established;

(3) order that the investigation be closed; or

(4) refer the matter for further investigation.

(r) The licensee, registrant, or applicant may either accept or reject at the conference the settlement recommendations. If the recommendations are accepted, an agreed settlement order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee, registrant, or applicant. The order shall contain agreed findings of fact and conclusions of law.

(s) If the licensee, registrant, or applicant:

(1) agrees to the settlement recommendations, he or she shall return the signed order to the board office within 10 days of his or her receipt of the order;

(2) fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations; or

(3) rejects the proposed settlement, the matter shall be referred to the executive secretary for appropriate action.

(t) If the licensee, registrant, or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(u) The identity of the licensee, registrant, or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee, registrant or applicant chooses to attend the board meeting. The licensee, registrant, or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee, registrant, or applicant is voluntary.

(v) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee, or registrant, or applicant is present at the board meeting and agrees to other terms proposed by the board.

(w) If the board does not approve a proposed agreed order, the licensee, registrant, or applicant and the complainant shall be so informed. The matter shall be referred to the executive secretary for other appropriate action.

(x) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

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 December 4, 2000.

TRD-200008413
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER N. PUBLICATIONS

22 TAC §§741.301 - 741.303

The repeals are adopted under the Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Chapter 401 of the Texas Occupations Code, and §401.204 which provides the board with authority to set fees in amounts that are reasonable and necessary to collect sufficient revenue to cover the costs of administration of the 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 December 4, 2000.

TRD-200008412
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: December 24, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 458-7236

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§97.1 - 97.4, 97.6 - 97.8, 97.10, 97.11, 97.13

The Texas Department of Health (department) adopts amendments to §§97.1-97.4, 97.6-97.8, 97.10-97.11, and 97.13 concerning reporting requirements for infectious diseases. Sections 97.1-97.3 and 97.7 are adopted with changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6069). Sections 97.4, 97.6, 97.8, 97.10-97.11, and 97.13 are adopted without changes, and therefore will not be republished.

These sections are adopted to enable the reporting sources to more clearly identify the conditions and diseases that must be reported, define the minimal reportable information on these conditions and diseases, and describe the procedures for reporting to the local health authority or the department.

The amendments to §§97.3, 97.4, and 97.6 add to or change the rules concerning the following diseases: anthrax, brucellosis, chickenpox, cholera, cyclosporiasis, *Escherichia coli* infection, hepatitis A (acute), hepatitis C (newly diagnosed), Q fever, smallpox, tularemia, and *Vibrio* infection. The change to hepatitis C reporting reflects the fact that the majority of hepatitis C infections are asymptomatic. In order to simplify reporting, invasive streptococcal disease is proposed to be limited to groups A and B. Chicken pox is moved from notifiable by number and age group only to fully notifiable. This would allow for the investigation of chicken pox as any other vaccine preventable disease. Brucellosis, hepatitis A (acute), Q fever, tularemia, and *Vibrio* infection are added to the list of diseases notifiable within one working day.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s).

Comment: Concerning §97.3(c), minimal reportable information requirements, one commenter wrote, "...moving chicken pox from notifiable by number and age group only to fully notifiable would allow for the investigation of chicken pox as any other vaccine preventable disease." The sole act of receiving reports may not have a significant impact on state or local government. However, the action of investigating each reported case of chicken pox will have a decided impact on those required to participate in the investigation and any laboratories supporting the investigation. Taking action to confirm the diagnosis, particularly if made outside a physician's office, will be labor intensive. Additional hours will be needed to determine the immune status of potentially exposed people to each case. The time spent at the local level on each case will be considerable."

Response: The department disagrees. Chickenpox became a vaccine-preventable disease in 1995 with licensure of the varicella vaccine. Obtaining more complete information about individual cases became more important last August when varicella vaccine began to be required for all children enrolling in Texas schools and child-care facilities. At no time did the department intend to require the investigation of individual cases of chickenpox or that every diagnosis of chickenpox be confirmed. Sections 97.3(c)(1), 97.6(d)(1), and 97.6(d)(2) were deleted in the proposed language. Additional information on chickenpox cases will be collected according to §97.6(d). Local health agencies have the option of investigating chickenpox outbreaks, particularly in school or child-care facilities in which the vaccine is required for children at the time of enrollment, but the department is not requiring this action. No changes were made as result of this comment.

Comment: Concerning §97.2, "who shall report", one commenter suggested "Advance practice nurses should be included as persons required to report communicable diseases," and "as providers who may sign a health certificate for a child attending school or daycare." They also asked for the department to add a definition for advance practice nurse.

Response: The department agrees. New language has been added to §§97.2(a), 97.3, and 97.7(d)(1) as a result of this comment. Additionally, a definition for "advance practice nurse" and "physician assistant" has been added to §97.1, (relating to definitions). The additions result in the renumbering of the section.

Comment: Concerning §97.1, (relating to definitions), one commenter was opposed to replacing the term "reportable disease with notifiable condition" unless the term "notifiable condition is the same as the term reportable disease, as used in the Health and Safety Code."

Response: The department partially agrees. New language has been added to the definition for "notifiable condition" as a result of this comment.

Comment: Concerning §§97.1, 97.2, and 97.3, one commenter suggested grammatical changes.

Response: The department agrees. Suggested changes have been made to §§97.1, 97.2, and 97.3 as a result of this comment.

The commenters were The Waco-McClennon County Public Health District, The Coalition for Nurses in Advance Practice, the Texas Workers'Compensation Commission, and the Texas Hospital Association. None of the four commenters was opposed to the rule changes in the entirety. One expressed a concern, and the other three requested small changes, as discussed in the summary of comments.

The amendments are adopted under the Communicable Disease Prevention and Control Act, Health and Safety Code, §81.004, which provides the Board of Health with the authority to adopt rules concerning communicable diseases; §81.041 which requires the board to identify reportable diseases; §81.044 which requires the board to prescribe the form and method of reporting communicable diseases; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§97.1. Definitions.

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

(1) Act - Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.

(2) Advanced practice nurse - A registered nurse authorized by the Board of Nurse Examiners to practice as an advanced practice nurse based on completing an advanced educational program. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and clinical nurse specialist.

(3) Carrier - An infected person or animal that harbors a specific infectious agent in the absence of discernible clinical disease and serves as a potential source or reservoir of infection.

(4) Case - As distinct from a carrier, the term "case" is used to mean a person in whose tissues the etiological agent of a communicable disease is lodged and which usually produces signs or symptoms of disease. Evidence of the presence of a communicable disease may also be revealed by laboratory findings.

(5) Commissioner - Commissioner of Health.

(6) Communicable disease - An illness due to an infectious agent or its toxic products which is transmitted directly to a well person from an infected person or animal, or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

(7) Contact - A person or animal that has been in such association with an infected person or a contaminated environment so as to have had opportunity to acquire the infection.

(8) Department - Texas Department of Health.

(9) Disinfection - Destruction of infectious agents outside the body directly applied by chemical or physical means.

(10) *Enterococcus* Species - Any *Enterococcus* bacteria isolated in a laboratory.

(11) Epidemic - The occurrence in a community or region of a group of illnesses of similar nature, clearly in excess of normal expectancy, and derived from a common or a propagated source.

(12) Exposure - A situation or circumstance in which there is significant risk of becoming infected with the etiologic agent for the disease involved.

(13) Health authority - A physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121. The health authority, for purposes of these sections, may be:

(A) a local health authority:

(i) director of a local health department; or

(ii) physician as appointed by the Commissioner of Health if there is no director of a local health department.

(B) a regional director of the Texas Department of Health if no physician has been appointed by the Commissioner of Health as a local health authority.

(14) Hospital laboratory - Any laboratory that performs laboratory test procedures for a patient of a hospital either as a part of the hospital or through contract with the hospital.

(15) Notifiable condition - Any disease or condition that is required to be reported under the Act or by these sections. See §97.3 of this title (relating to What Condition To Report and What Isolates To Report or Submit). Any outbreak, exotic disease, or unusual group expression of illness which may be of public health concern, whether or not the disease involved is listed in §97.3 of this title, shall be considered a "notifiable condition". The term "notifiable condition" is the same as the term "reportable disease" as used in the Health and Safety Code.

(16) Outbreak - See definition of epidemic in this section.

(17) Penicillin resistant *Streptococcus pneumoniae* - *Streptococcus pneumoniae* with a penicillin minimum inhibitory concentration (MIC) of 2 µg/mL or greater (high level), and/or an intermediate level resistance of 0.1- 1 µg/mL.

(18) Physician - A person licensed by the Texas State Board of Medical Examiners to practice medicine in Texas.

(19) Physician assistant - A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(20) Regional director - The physician who is the chief administrative officer of a region as designated by the department under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121.

(21) Report - Information that is required to be provided to the department.

(22) Report of a disease - The notification to the appropriate authority of the occurrence of a specific communicable disease in man or animals, including all information required by the procedures established by the department.

(23) School Administrator - The city or county superintendant of schools or the principal of any school not under the jurisdiction of a city or county board of education.

(24) Significant risk - A determination relating to a human exposure to an etiologic agent for a particular disease, based on reasonable medical judgements given the state of medical knowledge, relating to the following:

(A) nature of the risk (how the disease is transmitted);

(B) duration of the risk (how long an infected person may be infectious);

(C) severity of the risk (what is the potential harm to others); and

(D) probability the disease will be transmitted and will cause varying degrees of harm.

(25) Specimen Submission Form G-1 - A multipurpose laboratory specimen submission form available from the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas, 78756-3199.

(26) Vancomycin resistant *Enterococcus* species - *Enterococcus* species with a vancomycin MIC greater than 16 micrograms per milliliter (µg/mL) or a disk diffusion zone of 14 millimeters or less. Vancomycin intermediate *Enterococcus* (e.g., *Enterococcus casseliflavis* and *Enterococcus gallinarum*) with a vancomycin MIC of 8 µg/mL - 16 µg/mL do not need to be reported.

(27) Vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species - *Staphylococcus aureus* or a coagulase negative *Staphylococcus* species with a vancomycin MIC of 8 µg/mL or greater.

§97.2. Who Shall Report.

(a) A physician, dentist, veterinarian, chiropractor, advanced practice nurse, physician assistant, or person permitted by law to attend a pregnant woman during gestation or at the delivery of an infant shall report, as required by these sections, each patient or animal he or she shall examine and who has or is suspected of having any notifiable condition, and shall report any outbreak, exotic disease, or unusual group expression of illness of any kind whether or not the disease is known to be communicable or reportable. An employee from the clinic or office staff may be designated to serve as the reporting officer. A physician, dentist, veterinarian, or chiropractor who can assure that a designated or appointed person from the clinic or office is regularly reporting every occurrence of these diseases or health conditions in their clinic or office does not have to submit a duplicate report.

(b) The chief administrative officer of a hospital shall appoint one reporting officer who shall be responsible for reporting each patient who is medically attended at the facility and who has or is suspected of having any notifiable condition. Hospital laboratories may report through the reporting officer or independently in accordance with the hospital's policies and procedures.

(c) Except as provided in subsection (b) of this section, any person who is in charge of a clinical laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopic, bacteriologic, virologic, parasitologic, serologic, or other evidence of a notifiable condition, shall report as required by this section.

(d) School authorities, including a superintendent, principal, teacher, school health official, or counselor of a public or private school

and the administrator or health official of a public or private institution of higher learning should report as required by these sections those students attending school who are suspected of having a notifiable condition. School administrators who are not medical directors meeting the criteria described in §97.132 of this title (relating to Who Shall Report Sexually Transmitted Diseases) are exempt from reporting sexually transmitted diseases.

(e) Any person having knowledge that a person is suspected of having a notifiable condition should notify the local health authority or the department and provide all information known to them concerning the illness and physical condition of such person or persons.

(f) Sexually transmitted diseases including HIV and AIDS shall be reported in accordance with §97.132 of this title.

(g) Failure to report a notifiable condition is a Class B misdemeanor under the Texas Health and Safety Code, §81.049.

§97.3. What Condition To Report and What Isolates To Report or Submit.

(a) Identification of notifiable conditions.

(1) The most current edition of the Texas Department of Health's (department) publication titled "Identification, Confirmation, and Reporting of Notifiable Conditions" should shall be reported under these sections based on a specific diagnosis, test procedure, and/or confirmatory test. Copies are available upon request to the Materials Acquisition and Management Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Copies are filed in the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and are available for public inspection during regular working hours.

(2) Repetitive test results from the same patient do not need to be reported except those for mycobacterial infections.

(b) Notifiable conditions or isolates.

(1) Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism-adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox (varicella); *Chlamydia trachomatis* infection; Creutzfeldt-Jakob disease (CJD); cryptosporidiosis; cyclosporiasis; dengue; diphtheria; ehrlichiosis; encephalitis (specify etiology); *Escherichia coli*, enterohemorrhagic infection; gonorrhea; Hansen's disease (leprosy); *Haemophilus influenzae* type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, B, D, E, and unspecified (acute); hepatitis C (newly diagnosed infection, effective 1/1/00); hepatitis B, (chronic) identified prenatally or at delivery as described in §97.135 of this title (relating to Serologic Testing during Pregnancy and Delivery; human immunodeficiency virus (HIV) infection; legionellosis; listeriosis; Lyme disease; malaria; measles (rubeola); meningitis (specify type); meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; Q fever; rabies in man; relapsing fever; rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; smallpox; spotted fever group rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease, invasive (group A or B); syphilis; tetanus; trichinosis; tuberculosis; tularemia; typhus; *Vibrio* infection, including cholera (specify species); viral hemorrhagic fevers; yellow fever; and yersiniosis.

(2) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(3) The following organisms shall be reported: Enterococcus species; vancomycin resistant Enterococcus species; vancomycin resistant Staphylococcus aureau; vancomycin resistant coagulase negative Staphylococcus species; Streptococcus pneumoniae; and penicillin-resistant Streptococcus pneumoniae.

(c) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(1) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with §§97.132-97.135 of this title (relating to Sexually Transmitted Diseases, including AIDS and HIV infection);

(2) for tuberculosis - name, present address, present telephone number, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, antibiotic susceptibility results, initial antibiotic therapy, and any change in antibiotic therapy;

(3) for hepatitis B, (chronic and acute) identified prenatally or at delivery - name, present address, present telephone number, age, date of birth, sex, race and ethnicity, estimated delivery date (for prenatal diagnoses), name of baby and location of delivery (for diagnoses made at delivery), physician, advanced practice nurse, physician assistant or other person in attendance, disease, type of diagnosis, date of onset, address, telephone number;

(4) for all other notifiable conditions listed in subsection (b)(1) of this section - name, present address, present telephone number, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, address, and telephone number;

(5) for all isolates of *Enterococcus* species and all isolates of *Streptococcus pneumoniae* regardless of resistance patterns - numeric totals at least quarterly; and

(6) for vancomycin resistant *Enterococcus* species; penicillin resistant *Streptococcus pneumoniae*; vancomycin resistant *Staphylococcus aureus*; vancomycin resistant coagulase negative *Staphylococcus* species, - name, city of submitter, date of birth or age, sex, anatomic site of culture, and date of culture.

(d) Diseases requiring submission of cultures. For all Neisseria meningitides from normally sterile sites, all vancomycin resistant Staphylococcus aureus, and vancomycin resistant coagulase negative Staphylococcus species-pure cultures shall be submitted accompanied by a Specimen Submission Form G-1.

§97.7. Diseases Requiring Exclusion from Child-care Facilities and Schools.

(a) The Texas Department of Health (department) publication titled "Recommendations for the Prevention and Control of Communicable Diseases in a Group-Care Setting" may be used to determine the incubation period, early signs of illness, and prevention/treatment measures of communicable conditions. Copies are available from the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 upon request.

(b) The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable condition. Exclusion shall continue until the readmission criteria for the conditions are met. The conditions and readmission criteria are as follows:

(1) amebiasis--exclude until treatment is initiated;

(2) campylobacteriosis--exclude until after diarrhea and fever subside;

(3) chickenpox--exclude until after seven days from onset of rash, except immunocompromised individuals who should not return until all blisters have crusted over (may be longer than seven days);

(4) common cold--exclude until fever subsides;

(5) conjunctivitis, bacterial and/or viral--exclude until written permission and/or permit is issued by a physician or local health authority;

(6) fever--exclude until fever subsides;

(7) fifth disease (erythema infectiosum)--exclude until fever subsides;

(8) gastroenteritis, viral--exclude until diarrhea subsides;

(9) giardiasis--exclude until diarrhea subsides;

(10) head lice (pediculosis)--exclude until one medicated shampoo or lotion treatment has been given;

(11) hepatitis, viral, Type A--exclude until one week after onset of illness;

(12) impetigo--exclude until treatment has begun;

(13) infectious mononucleosis--exclude until physician decides or fever subsides;

(14) influenza--exclude until fever subsides;

(15) measles (rubeola)--exclude until four days after rash onset or in the case of an outbreak, unimmunized children should also be excluded for at least two weeks after last rash onset occurs;

(16) meningitis, bacterial--exclude until written permission and/or permit is issued by a physician or local health authority;

(17) meningitis, viral--exclude until fever subsides;

(18) mumps--exclude until nine days after the onset of swelling;

(19) pertussis (whooping cough)--exclude until completion of five days of antibiotic therapy;

(20) ringworm of the scalp--exclude until treatment has begun;

(21) rubella (German measles)--exclude until seven days after rash onset or in the case of an outbreak, unimmunized children should be excluded for at least three weeks after last rash onset occurs;

(22) salmonellosis--exclude until diarrhea and fever subside;

(23) scabies--exclude until treatment has begun;

(24) shigellosis--exclude until diarrhea and fever subside;

(25) streptococcal sore throat and scarlet fever--exclude until 24 hours from time antibiotic treatment was begun and fever subsided; and

(26) tuberculosis, pulmonary--exclude until antibiotic treatment has begun and a physician's certificate or health permit obtained.

(c) The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable disease designated by the commissioner of health (commissioner) as cause for exclusion until one of the criteria listed in subsection (d) of this section is fulfilled.

(d) Any child excluded for reason of communicable disease may be readmitted, as determined by the health authority, by submitting:

(1) a certificate of the attending physician, advanced practice nurse, or physician assistant attesting that the child does not currently have signs or symptoms of a communicable disease or to the disease's non-communicability in a child-care or school setting;

(2) a permit for readmission issued by a local health authority; or

(3) readmission criteria as established by the commissioner.

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

Filed with the Office of the Secretary of State on November 30, 2000.

TRD-200008340
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: December 20, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 458-7236

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PART 16. TEXAS HEALTH CARE INFORMATION COUNCIL

CHAPTER 1301. HEALTH CARE INFORMATION

SUBCHAPTER A. HOSPITAL DISCHARGE DATA RULES

25 TAC §1301.11, §1301.18

The Texas Health Care Information Council (Council) adopts amendments to §1301.11 and §1301.18, concerning the reporting and collection of hospital discharge data, with changes to the proposed text as published on October 6, 2000 in the *Texas Register* (25 TexReg 10111). Changes in the adopted amendments respond to public comments or otherwise reflect non-substantive variations from the proposed amendments. The Council's representative from the Office of the Attorney General has advised that the changes affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be less burdensome than under the proposed sections.

The Council did not hold a public hearing and none was requested on the proposed amendments. Additionally, the Council received written comments on the proposed amendments to the Hospital Discharge Data Rules from the Texas Hospital Association (THA), Dallas Fort Worth Hospital Council (DFWHC) and the Texas Medical Association (TMA) and consulted with the technical advisory committee listed in §108.003(g)(5), Health and Safety Code as required by §108.003 (g), Health and Safety Code.

SUMMARY OF COMMENTS FROM THE PROPOSED CHANGES FROM OCTOBER 6, 2000 PUBLICATION IN THE TEXAS REGISTER WITH THE COUNCIL'S RESPONSES REGARDING THE PROPOSED AMENDMENTS.

One commenter recommended that the definition of "Accurate and Consistent data" in §1301.11(1) be consistent with the definition in §108.002 (1) of the Health and Safety Code. The Council agrees and inserted the phrase "and certification." after the word "validation".

Two commenters recommended that the first sentence in §1301.11(2) Attending Physician, be revised to read: The individual licensed under the Medical Practice Act (Occupations Code, Chapter 151) or the licensed health professional *granted clinical privileges by the hospital and* responsible for the care of the patient during the hospital episode as reported on the claim. The Council disagrees with the recommended change, because the change does not provide additional clarification for the purposes of the Council and would require a definition of clinical privileges. The Council expects that the physicians and other health professionals that appear on the claim data submitted to the Council to have been granted clinical privileges for examining or treating patients in the hospital.

One commenter requested that a definition for "Operating or Other Physician" be added to rules. The Council agrees, but there is no clear definition and the Council does not believe it is critical to the understanding of the rules or the submission of data. The Council expects that hospitals are submitting the same physician or other health professional identification number and name that they submitted on a claim form in the "operating or other physician" fields (in the acceptable formats as specified in §1301.19 of this title). The Council may add the definition of "Operating or other physician" in a future set of proposed amendments.

One commenter recommended that the statutory language of §108.011(g) of the Health and Safety Code be added to the "Comments" definition in §1301.11 (6). The Council disagrees with the commenter, because this would repeat a mandated process that is specified in the enabling statute.

One commenter recommended that the last sentence in §1301.11(25) be revised to read: The term encompasses persons licensed under various Texas practice statutes, such as psychologists, chiropractors, dentists, nurse practitioners, nurse midwives, and podiatrists who are authorized *by the hospital* to admit or treat patients. The Council agrees with the recommended change and inserted the revised language.

One commenter recommended that the definition of §1301.11(30) Public Use Data File be modified to include the terms "patient level" and "has not been summarized or analyzed". The definition was not among the proposed amendments to the rules. The recommendation would require that the amendment be formally proposed and the public provided an opportunity to comment on the suggested modification of the definition.

One commenter suggested that the language in §1301.18 (c)(1)-(4) does not provide sufficient protection of patient identifiable information as required by §108.006 (f) and §108.013(c)(1), Health and Safety Code. The commenter recommends that the Council clearly delineate patient identifiable data and which data elements are to be removed and how the other data elements are to be modified, and that these processes be put into rule form. The Council protects the confidentiality of patients and physicians through 1) restricted access to data that has been submitted by the hospitals and 2) statistical disclosure-avoidance techniques. These methods will be implemented by staff through internal procedures in order to conform to relevant statutes and regulations (federal and state) on a timely basis. The Council disagrees with writing internal procedures into rule form and believes that the rules and the amendments to the rules do satisfy §108.006(f) and §108.013(c), Health and Safety Code. The Hospital Discharge Data Committee has discussed and voted on the procedures and processes for protecting the patient and physician confidentiality. The adoption of these amended sections provides evidence of full Council approval. The commenter made the five following recommendations. The Council's responses to the comments follow the recommendations:

1. The commenter recommended that the criteria for protecting patient confidentiality by removing the last two digits of the ZIP code when there are fewer than 30 patients discharged with that same ZIP code be put into rule form. The Council agrees with the commenter and is utilizing this methodology, but disagrees with putting an internal procedure into rule form.

2. The commenter recommended that the Council put in rule form a procedure to protect patients that have residences outside the state of Texas and are not contiguous with the border of Texas to be coded with a ZIP code of 88888 and change the state code to ZZ. The Council is utilizing this methodology, but disagrees with putting an internal procedure into rule form.

3. The commenter recommended that the Council recode race codes to "Other" when there are cell sizes of less than ten or when gender is considered, the Council would recode patients of a specific race in one specific hospital when their number is less than five. The Council is using a modified version of the first recommended methodology and is recoding the "race" code to "Other" and suppressing the "ethnic" codes for those patients. The Council disagrees with putting an internal procedure into rule form.

4. The commenter recommended that the Council publish in the public use data file the patient's age in years and for patient's less than one year to have their age reported in days and that the Council recode any patient ages one hundred years or older to 99 years. The Council will consider the recommended methodology for the future, but the Hospital Discharge Data committee has recommended that the ages be grouped to protect patient confidentiality. The Council disagrees with putting an internal procedure into rule form.

5. The commenter recommended that the Council define terms of THCIC Identification Number, Facility Type Indicator and Service Unit Indicator (§1301.18(c)(11)(C, D and BBB, respectively). The Council agrees with the commenter and has added definitions for the terms in §1301.11 and re-numbered that section accordingly.

One commenter recommended that §1301.18(c)(7) be revised to read: *The minimum cell size required by § 108.011(i)(2) of the Health and Safety Code shall be five, unless the executive director determines that a higher cell size is required to protect the confidentiality of an individual patient or physician. When determining a higher cell size, the executive director shall consider comments submitted by a hospital and recommendations submitted by the technical advisory committee as identified in the Texas Health and Safety Code § 1O8.003(g)(5).* The Council agrees with the commenter and has inserted the language.

Two commenters recommended that the language of §1301.18(c)(7) is too vague and does not provide meaningful criteria. Both commenters recommended the following language replace the proposed language of §1301.18(c)(7):

For each public use data file released and each report issued by the Council from the public use data, the executive director shall establish policies and procedures that prevent uniform physician identifiers from being published when:

(A)In the entire public use data file:

1) There are less than five diagnosis related groups (DRG's) assigned to one uniform physician identifier and

2) For each DRG, there are less than five distinct uniform physician identifiers.

(B) For each hospital within the public use data file:

1) There are less than five DRG's assigned to one distinct uniform physician identifier and

2) For each DRG, there are less than five distinct uniform physician identifiers.

(C) The criteria above would be applied to each uniform physician identifier whether in the attending, operating/other (or if left in rule, first other or second other) physician fields. If any of the criteria in (A) or (B) are met for a uniform physician identifier, the affected uniform physician identifier would be suppressed in each of the two (or four) physician data fields.

The Council agrees with establishing five as the minimum cell size to protect physician confidentiality as required by §108.011(i)(2) of the Health and Safety Code, and agrees that each of the physician fields on the public use data file will have the criteria applied. The Council agrees with applying the screening criteria for physician confidentiality as described in (B)(2) of the commenters' proposed language, but disagrees with putting the criteria for protecting patient and physician confidentiality (internal procedure) into rule form. The Council believes that the criterion established in (B)(2) adequately protects physician confidentiality and applying the criterion of (B)(1) unnecessarily removes specialists treating less than five different DRG types. The Council believes that applying the criteria described in paragraph (A) would not provide any additional protection, because using a smaller subset (hospital level) precludes screening in a larger group (entire public use data file).

Both commenters from above also recommended that specific language be added to the hospital discharge data rules regarding patient confidentiality. The Council protects the confidentiality of patients through 1) restricted access to data that has been submitted by the hospitals and 2) statistical disclosure-avoidance techniques. Staff through internal procedures implements these methods in order to conform to relevant statutes and regulations (federal and state) on a timely basis. The Council disagrees with writing internal procedures into rule form.

One commenter recommended that the Council should suppress the hospital name and THCIC Identification Number located in §1301.18(c)(11)(B & C) if the total number of discharges for a quarter is less than fifty (50) and that the Council should work with each impacted facility to identify a related facility. An option could be to merge cases within the larger reporting entity or to merge two small-related entities into one larger reporting facility.

Several sections of the enabling statute are involved with this recommendation. 1) The Council is mandated by §108.011(c) of the Health and Safety Code to use public use data to prepare and issue reports that provide information relating to providers and the reports must provide the data in a manner that identifies individual providers and identifies and compares data elements for all providers. 2) The Council is required to aggregate public use data without uniform physician identifiers as described in §108.011(i). 3) The Council must not release data that could reasonably identify a patient or physician as specified in §108.013 (c)(1 & 2), Health and Safety Code. The Council believes the legislative language does not provide clear guidance to this particular condition. Therefore, the Council has discussed and decided that the main emphasis is on protecting patient and physician confidentiality and that a greater value should be placed on those sections than on identifying all individual providers for reports. The Council agrees with the methodology and is using a modified version of the recommendation that aggregates hospitals with less than 50 discharges for the quarter and will list the names of the hospitals in the public use data file user manual. The Council will also suppress the physician identifiers for the hospitals that are covered in §108.0025(1). The Council has analyzed the data and found that 28 hospitals with roughly 1000 discharges (0.15 % of the discharges per quarter) will be affected by the aggregation. The Council believes that attempting to identify and merge two small-related facilities would not maintain consistency between quarters as hospitals realign their practice pattern or change owners. The Council believes the method above would remain consistent between quarters.

One commenter recommended that the Council suppress data for a hospital for the quarter in which the hospital initiated data submission or ceased data submission to the Council, due to opening a new facility, closing a facility, or change of ownership or management and subsequent loss of exemption. The Council disagrees with suppressing data from hospitals that submit data for only a partial quarter. The facilities are provided the opportunity to comment about their change in status. Suppressing partial quarter data would create inaccurate ZIP code, County, Metropolitan Statistical Area and Public Health Region Count totals. The Council is mandated in §108.013 (a) "The data received by the council shall be used by the Council for the benefit of the public. Subject to specific limitations established by this chapter and council rule, the Council shall make determinations on requests for information in favor of access." The Council will place the data in the "Low Discharge Volume Hospital" category, if the hospital has less than 50 discharges for the quarter.

One commenter recommended that the Council remove the requirement for hospitals to submit data for "Other Physician #1" and "Other Physician #2" and to remove these from the public use data file list of data elements. The Council did not propose to amend §1301.19(e) of this title; therefore, the Council will consider this for future amendments. The Council agrees to removing the "Other physician #1" and "Other physician #2" uniform physician identifiers from the public use data file and has removed the data elements from §1301.18(c)(11).

The amendments are adopted under the Health and Safety Code, §108.006 and §108.009. The Council interprets §108.006 as authorizing it to adopt rules necessary to carry out Chapter 108, including rules concerning data dissemination requirements. The Council interprets §108.009 as authorizing the Council to adopt rules regarding the collection of data from hospitals in uniform submission formats in order for the

incoming data to be substantially valid, consistent, compatible and manageable.

The Health and Safety Code, §§108.002, 108.006, 108.009, 108.011, 108.012 and 108.013 are affected by these adopted amendments.

§1301.11. Definitions.

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

(1) Accurate and Consistent data - Data that has been edited by the Council and subjected to provider validation and certification.

(2) Attending Physician - The individual licensed under the Medical Practice Act (Occupations Code, Chapter 151) or the licensed health professional primarily responsible for the care of the patient during the hospital episode as reported on the claim. For Skilled Nursing Facility (SNF) services, the attending physician is the individual who certifies the SNF plan of care.

(3) Batch file--A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) which contains one or more discharge files and other required header and trailer records. A batch contains discharge files for only one hospital.

(4) Certification Process-- The process by which a provider confirms the accuracy and completeness of the encounter data set required to produce the public use data file as specified in §1301.17 of this title.

(5) Charge--The amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances, government mandated fee schedules or write-offs for charity care, bad debt or administrative courtesy. The term does not include co-payments charged to health maintenance organization enrollees by providers paid by capitation or salary in a health maintenance organization.

(6) Comments- The notes or explanations submitted by the hospitals, physicians or other health professionals concerning the provider quality reports or the encounter data for public use as described in the Texas Health and Safety Code, §108.010(c) and (e) and §108.011(g) respectively.

(7) Council--The Texas Health Care Information Council.

(8) Data format--The sequence or location of data elements on a paper form or electronic record according to prescribed specifications.

(9) Discharge--The formal release of a patient by a hospital; that is, the termination of a period of hospitalization by death or by disposition to a residence or another health care provider.

(10) Discharge file--A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) relating to a specific patient. Except for some normal newborn infants there will be one or more discharge files for each inpatient.

(11) Discharge report--A computer file as defined in §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) periodically submitted on or on behalf of a Hospital in compliance with the provisions of this chapter.

(12) DRG - Diagnosis Related Group

(13) EDI - Electronic Data Interchange - A method of sending data electronically from one computer to another. EDI helps providers and payers maintain a flow of vital information by enabling the transmission of claims and managed care transactions.

(14) Edit--An electronic standardized process developed and implemented by the Council to identify potential errors and mistakes in data elements by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of data.

(15) Electronic filing--The submission of computer records in machine readable form by modem transfer from one computer to another or by recording the records on a nine track magnetic tape, computer diskette or other magnetic media acceptable to the executive director.

(16) Error--Data submitted on a discharge report which are not consistent with the format and data standards contained in this section or with editing criteria established by the executive director, or the failure to submit required data.

(17) Ethnicity--The status of patients relative to Hispanic background.

(18) Executive director--The chief administrative officer of the Council, or, in the event the Council is without an executive director, the person designated by the chairperson of the Council to perform the functions and exercise the authority of the executive director.

(19) Facility Type Indicators - An indicator that provides information to the data user as to the type of facility or the primary health services delivered at that facility (e.g. Teaching, Acute Care, Rehabilitation, Psychiatric, Pediatric, Cancer, Skilled Nursing or other Long Term Care Facility), A facility may have more than one indicator. Hospitals may request updates to this field.

(20) Geographic identifier--A set of codes indicating the public health region and county in which the patient resides.

(21) Health care facility--A hospital, an ambulatory surgery center licensed under Chapter 243 of the Health and Safety Code, a chemical dependency treatment facility licensed under Chapter 464 of the Health and Safety Code, a renal dialysis center, a birthing center, a rural health clinic or a federally qualified health center as defined by 42 United States Code, §1396(1)(2)(B).

(22) Hospital--A public, for-profit, or nonprofit institution licensed or owned by this state that is a general or special hospital, private mental hospital, chronic disease hospital or other type of hospital.

(23) ICD-International Classification of Disease.

(24) Inpatient--A patient, including a newborn infant, who is formally admitted to the inpatient service of a hospital and who is subsequently discharged, regardless of status or disposition. Inpatients include patients admitted to medical/surgical, intensive care, nursery, subacute, skilled nursing, long-term, psychiatric, substance abuse, physical rehabilitation and all other types of hospital units.

(25) Other exempted provider--A hospital exempt from state franchise, sales, ad valorem, or other state and local taxes that does not seek or receive reimbursement for providing health care services to patients from any source, including the patient or any person legally obligated to support the patient; a third party payer; or Medicaid, Medicare, or any other federal, state or local program for indigent health care.

(26) Other health professional--A person licensed to provide health care services other than a physician. An individual other than a physician who admits patients to hospitals or who provides diagnostic or therapeutic procedures to inpatients. The term encompasses

persons licensed under various Texas practice statutes, such as psychologists, chiropractors, dentists, nurse practitioners, nurse midwives, and podiatrists who are authorized by the hospital to admit or treat patients.

(27) Patient control number--A number assigned to each patient by the hospital which appears on each computer record in a patient discharge file. This number is not consistent for a given patient from one hospital to the next, or from one admission to the next in the same hospital. The Council deletes or encrypts this number to protect patient confidentiality prior to release of data.

(28) Physician--An individual licensed under the laws of this state to practice medicine under the Medical Practice Act, Occupations Code Chapter 151.

(29) Provider--A physician or health care facility.

(30) Provider quality data --A report or reports authored by the Council on provider quality or outcomes of care, as defined in Chapter 108 of Health and Safety Code, created from data collected by the Council or obtained from other sources.

(31) Public use data file--A data file composed of discharge files with risk and severity adjustment scores which have been altered by the deletion, encryption or other modification of data fields to protect patient and physician confidentiality and to satisfy other restrictions on the release of hospital discharge data imposed by statute.

(32) Race--A division of patients according to traits that are transmissible by descent and sufficient to characterize them as distinctly human types. Hospitals shall report this data element according to the following racial types: American Indian, Eskimo, or Aleut; Asian or Pacific Islander; Black; White; or Other.

(33) Required minimum data set--The data elements which hospitals are required to submit in a discharge file for each inpatient regardless of whether or not the hospital would have prepared a bill for the inpatient. The required minimum data set is specified in §1301.19(d) of this title (relating to Discharge Reports--Records, Data Fields and Codes).

(34) Risk adjustment--A statistical method to account for a patient's severity of illness at the time of admission and the likelihood of development of a disease or outcome, prior to any medical intervention.

(35) Rural provider--A health care facility located in a county with a population of not more than 35,000 as of July 1 of the most recent year according to the most recent United States Bureau of the Census estimate; or located in a county with a population of more than 35,000 but with 100 or fewer licensed hospital beds and not located in an area that is delineated as an urbanized area by the United States Bureau of the Census; and is not state owned, or not managed or directly or indirectly owned by an individual, association, partnership, corporation, or other legal entity that owns or manages one or more other hospitals. A health care facility is not a rural provider if an individual or legal entity that manages or owns one or more other hospitals owns or controls more than 50% of the voting rights with respect to the governance of the facility.

(36) Service Unit Indicator - An indicator derived from submitted data (based on Bill type or Revenue Codes) and represents the type of service unit or units (e.g., Coronary Care Unit, Detoxification Unit, Intensive Care Unit, Hospice Unit, Nursery, Obstetric Unit, Oncology Unit, Pediatric Unit, Psychiatric Unit, Rehabilitation Unit, Sub acute Care Unit or Skilled Nursing Unit) where the patient received treatment.

(37) Severity adjustment--A method to stratify patient groups by degrees of illness and mortality.

(38) Submission--A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) that constitutes the discharge report for one or more hospitals.

(39) Submitter--The person or organization which physically prepares discharge reports for one or more hospitals and submits them to the Council. A submitter may be a hospital or an agent designated by a hospital or its owner.

(40) THCIC Identification Number - A string of six characters assigned by the Council to identify health care facilities for reporting and tracking purposes.

(41) Uniform facility identifier--A unique number assigned by the Council to each health care facility in the state. For hospitals this will be the hospital's state license number. Where a hospital operates multiple facilities under one license number, the Council will assign a suffix for each separate facility. The relationship between facility identifier and the name, license number, and assigned suffix of the facility is public information.

(42) Uniform other health professional identifier--A unique number assigned by the Council to an individual other health professional who is reported as admitting or treating a hospital inpatient, and composed of numeric, alpha, or alphanumeric characters, which remains constant across hospitals. The relationship of the identifier to the health professional-specific data elements used to assign it is confidential.

(43) Uniform patient identifier--A unique number assigned by the Council to an individual patient and composed of numeric, alpha, or alphanumeric characters, which remains constant across hospitals and inpatient admissions. The relationship of the identifier to the patient-specific data elements used to assign it is confidential.

(44) Uniform physician identifier--A unique number assigned by the Council to any physician or other health professional who is reported as admitting or treating a hospital inpatient which remains constant across hospitals. The relationship of the identifier to the physician-specific data elements used to assign it is confidential.

(45) Validation--The process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification.

§1301.18. Hospital Discharge Data Release.

(a) Council records are public records under Government Code, Chapter 552, except as specifically exempted by Health and Safety Code, §108.010 and §108.013. Copies of such records may be obtained upon request and upon payment of user fees established by the Council. The public use data file shall be available for public inspection during normal business hours. Discharge files in the original format as submitted to the Council are not available to the public, are not stored at the Council's office and are exempt from disclosure pursuant to Health and Safety Code, §108.010 and §108.013, and shall not be released. Likewise, patient and physician identifying data collected by the Council through editing of hospital data shall not be released.

(b) Creation of codes and identifiers. The executive director shall develop the following codes and identifiers, as listed in paragraphs (1)-(2) of this subsection, required for creation of the public use data file and for other purposes.

(1) The executive director shall create a process for assigning uniform patient identifiers, uniform physician identifiers and uniform other health professional identifiers using data elements collected. This process is confidential and not subject to public disclosure. Any

documents or records produced describing the process or disclosing the person associated with an identifier are confidential and not subject to public disclosure.

(2) The executive director shall create a process for assigning geographic identifiers to each discharge record.

(c) Creation of public use data file. The executive director will create a public use data file by creating a single record for each inpatient discharge and adding, modifying or deleting data elements in the following manner as listed in paragraphs (1)-(11) of this subsection:

(1) delete patient, and insured name, Social Security Number, address and certificate data elements and any patient identifying information, if submitted; delete patient control and medical record numbers.

(2) convert patient birth date to age;

(3) convert admission and discharge dates to a length of stay measured in days and a code for the day of the week of the admission;

(4) convert procedure and occurrence dates to day of stay values;

(5) delete physician and other health professional names and numbers;

(6) assign codes indicating the primary and secondary sources of payment;

(7) The minimum cell size required by §108.011(i)(2) of the Health and Safety Code shall be five, unless the executive director determines that a higher cell size is required to protect the confidentiality of an individual patient or physician. When determining a higher cell size, the executive director shall consider comments submitted by a hospital and recommendations submitted by the technical advisory committee as identified in the Texas Health and Safety Code § 108.003(g)(5).;

(8) convert all procedure codes to ICD codes (in the version that is current for the date the data was due to be submitted or the version in effect at the date of service);

(9) add risk and severity adjustment scores utilizing an algorithm approved by the Council;

(10) suppress admission source data at patient level when the admission type code represents "Newborn";

(11) Data elements to be included in the public use data file:

(A) Discharge Year and Quarter

(B) Provider Name (Facility Name)

(C) THCIC Identification Number

(D) Facility Type Indicators

(E) Patient Sex/Gender

(F) Type of Admission

(G) Source of Admission

(H) Patient ZIP Code

(I) County Code

(J) Public Health Region Code

(K) Patient State

(L) Patient Status

(M) Patient Race

(N) Patient Ethnicity

(O) Source of Payment Code, Non-Standard Codes (Primary payer (and Secondary payer (if applicable))) (Beginning with third quarter 2000 data the second payer code information will be published)

(P) Source of Payment Code, Standard Codes (Primary payer (and Secondary payer (if applicable))) (Beginning with third quarter 2000 data the second payer code information will be published)

(Q) Type of Bill

(R) Encounter Indicator: This indicates whether more than one claim was used to create the encounter

(S) Principal Diagnosis Code (Current version of ICD codes at the time data is submitted)

(T) Other Diagnosis Codes (1)(Current version of ICD codes at the time data is submitted)

(U) Other Diagnosis Codes (2)(Current version of ICD codes at the time data is submitted)

(V) Other Diagnosis Codes (3)(Current version of ICD codes at the time data is submitted)

(W) Other Diagnosis Codes (4)(Current version of ICD codes at the time data is submitted)

(X) Other Diagnosis Codes (5)(Current version of ICD codes at the time data is submitted)

(Y) Other Diagnosis Codes (6) (Current version of ICD codes at the time data is submitted)

(Z) Other Diagnosis Codes (7)(Current version of ICD codes at the time data is submitted)

(AA) Other Diagnosis Codes (8)(Current version of ICD codes at the time data is submitted)

(BB) Principal Procedure code (if applicable)(Current version of ICD codes at the time data is submitted)

(CC) Other Procedure code (1)(Current version of ICD codes at the time data is submitted)

(DD) Other Procedure code (2)(Current version of ICD codes at the time data is submitted)

(EE) Other Procedure code (3)(Current version of ICD codes at the time data is submitted)

(FF) Other Procedure code (4)(Current version of ICD codes at the time data is submitted)

(GG) Other Procedure code (5)(Current version of ICD codes at the time data is submitted)

(HH) Admitting Diagnosis (Current version of ICD codes at the time data is submitted)

(II) External Cause of Injury (if applicable)(Current version of ICD codes at the time data is submitted)

(JJ) Day of Week Patient is admitted code (Sun. = 1, Mon. = 2, Tues. = 3, Wed. = 4, Thur. = 5, Fri. = 6, Sat. = 7)

(KK) Length of Stay

(LL) Age of patient

(MM) Day number of Principal Procedure (Calculated Principal Procedure Date minus Admission/Start of Care Date)

(NN) Day number of Procedure (1) (Calculated Procedure Date (1) minus Admission/Start of Care Date)

(OO) Day number of Procedure (2) (Calculated Procedure Date (2) minus Admission/Start of Care Date)

(PP) Day number of Procedure (3) (Calculated Procedure Date (3) minus Admission/Start of Care Date)

(QQ) Day number of Procedure (4) (Calculated Procedure Date (4) minus Admission/Start of Care Date)

(RR) Day number of Procedure (5) (Calculated Procedure Date (5) minus Admission/Start of Care Date)

(SS) Major Diagnostic Category (MDC)

(TT) HCFA-DRG Code (Obtained from the 3M HCFA-DRG Grouper)

(UU) APR-DRG Code (Obtained from 3M APR-DRG Grouper)

(VV) Risk of Mortality Score (Obtained from 3M APR-DRG Grouper)

(WW) Severity of Illness Score (Obtained from 3M APR-DRG Grouper)

(XX) Uniform Physician Identifier assigned to Attending Physician (Beginning with 2000 data)

(YY) Uniform Physician Identifier assigned to Operating or Other Physician (Beginning with 2000 data)

(ZZ) Service unit indicator from which the patient received services

(AAA) Accommodations Private Room Charges (Beginning with third quarter 2000 data)

(BBB) Accommodations Semi-Private Charges (Beginning with third quarter 2000 data)

(CCC) Accommodations Ward Charges (Beginning with third quarter 2000 data)

(DDD) Accommodations Intensive Care Charges (Beginning with third quarter 2000 data)

(EEE) Accommodations Coronary Care Charges (Beginning with third quarter 2000 data)

(FFF) Ancillary Service- Other Charges (Beginning with third quarter 2000 data)

(GGG) Ancillary Service- Pharmacy Charges (Beginning with third quarter 2000 data)

(HHH) Ancillary Service- Medical/Surgical Supply Charges (Beginning with third quarter 2000 data)

(III) Ancillary Service- Durable Medical Equipment Charges (Beginning with third quarter 2000 data)

(JJJ) Ancillary Service- Used Durable Medical Equipment Charges (Beginning with third quarter 2000 data)

(KKK) Ancillary Service- Physical Therapy Charges (Beginning with third quarter 2000 data)

(LLL) Ancillary Service- Occupational Therapy Charges (Beginning with third quarter 2000 data)

(MMM) Ancillary Service- Speech Pathology Charges (Beginning with third quarter 2000 data)

(NNN) Ancillary Service- Inhalation Therapy Charges (Beginning with third quarter 2000 data)

(OOO) Ancillary Service- Blood Charges (Beginning with third quarter 2000 data)

(PPP) Ancillary Service- Blood Administration Charges (Beginning with third quarter 2000 data)

(QQQ) Ancillary Service- Operating Room Charges (Beginning with third quarter 2000 data)

(RRR) Ancillary Service- Lithotripsy Charges (Beginning with third quarter 2000 data)

(SSS) Ancillary Service- Cardiology Charges (Beginning with third quarter 2000 data)

(TTT) Ancillary Service- Anesthesia Charges (Beginning with third quarter 2000 data)

(UUU) Ancillary Service- Laboratory Charges (Beginning with third quarter 2000 data)

(VVV) Ancillary Service- Radiology Charges (Beginning with third quarter 2000 data)

(WWW) Ancillary Service- MRI Charges (Beginning with third quarter 2000 data)

(XXX) Ancillary Service- Outpatient Services Charges (Beginning with third quarter 2000 data)

(YYY) Ancillary Service- Emergency Service Charges (Beginning with third quarter 2000 data)

(ZZZ) Ancillary Service- Ambulance Charges (Beginning with third quarter 2000 data)

(AAAA) Ancillary Service- Professional Fees Charges (Beginning with third quarter 2000 data)

(BBBB) Ancillary Service- Organ Acquisition Charges (Beginning with third quarter 2000 data)

(CCCC) Ancillary Service- ESRD Revenue Setting Charges (Beginning with third quarter 2000 data)

(DDDD) Ancillary Service - Clinic Visit Charges (Beginning with third quarter 2000 data)

(EEEE) Total Charges - Accommodations, for the Claim (Beginning with third quarter 2000 data)

(FFFF) Total Charges - Ancillary, for the Claim (Beginning with third quarter 2000 data)

(GGGG) Total Non-Covered Accommodation Charges, for the Claim (Beginning with third quarter 2000 data)

(HHHH) Total Non-Covered Ancillary Charges, for the Claim (Beginning with third quarter 2000 data)

(IIII) Total Charges, for the Claim (Beginning with third quarter 2000 data)

(JJJJ) Total Non-Covered Charges, for the Claim (Beginning with third quarter 2000 data);

(d) Release of public use data files. The Council shall release in an aggregate form without uniform patient, physician or other

health professional identifiers public use data relating to hospitals described by the Health and Safety Code, §108.0025(1) that are not rural providers because they do not meet the requirements of §108.0025(2).

(e) The executive director will make available a public use data file on magnetic media for each quarter:

(1) The executive director shall release public use data from hospitals that have certified the data as required by §1301.17 of this title (relating to Certification of Discharge Reports). A hospital's failure to execute the certification form after six months shall not prevent the executive director from releasing the hospital's data if the director believes the data submitted is reasonably accurate and complete. The executive director shall not include in the public use data file records derived from hospital discharge files which contain material errors and with the recommendation of the Hospital Discharge Data Committee may suppress for any quarter's data one or more data elements if deemed necessary to comply with provisions of the statutes. If an element is ordered suppressed by a judicial authority the Executive Director may suppress the element without the recommendation of the Hospital Discharge Data Committee. The executive director will include with the public use data file information on the number of discharge files received from each hospital and the number of discharge files from each hospital included on the public use data file.

(2) If additional discharge files become available after the initial release of the public use data file for any quarter, the executive director will add these records to the public use data file and make the additional records available to the public.

(3) The other sections of these rules notwithstanding, the executive director shall not create a public use data file from the discharge reports covering discharges occurring in 1998. It is the intent of the Council to utilize this data only for testing and calibration of its data processing systems and to allow hospitals the opportunity to test and calibrate their own data reporting systems.

(4) The first public use data file available for release will cover discharges for the first and second quarter of 1999. The Council will initially release six months of data in order to provide a more reliable body of data for analysis and decision-making and to make available public use data files on a quarterly schedule thereafter.

(f) The Council shall not charge Texas State agencies a fee for data requested solely for the internal use of the agency to comply with Health and Safety Code, §108.012(b). Prior to filling the request of a state agency without fee, the executive director shall secure an interagency agreement imposing restrictions on distribution, republication or reuse of the data in ways that would diminish user fees to the Council.

(g) The executive director shall establish procedures for screening all requests to assure that filling the request will not violate the provisions of Health and Safety Code, §108.013(c).

(h) The data elements specified for discharge reports in §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) do not constitute "Provider Quality Data" as discussed in Health and Safety Code, §108.010.

(i) A public use data file which is specified by the requestor shall not be considered a "report issued by the Council" as referenced in Health and Safety Code, §108.011(f).

(j) Requests for data files including data on one or more providers are matters of public record and copies of all requests shall be maintained by the Council for two years from the date of receipt. The executive director shall make available on the Council's Internet site and publish in the Council's numbered letter for hospitals a summary of all requests received for public use data.

(k) With any public use data file prepared by the Council, the executive director shall attach all comments submitted by providers which relate to any data included in the file. The Council shall also make these comments available at the Council's offices and on the Council's Internet site.

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 December 4, 2000.

TRD-200008381
Jim Loyd
Executive Director
Texas Health Care Information Council
Effective date: December 24, 2000
Proposal publication date: October 6, 2000
For further information, please call: (512) 482-3312

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER V. PHARMACY BENEFITS

28 TAC §§21.3001, 21.3010, 21.3011, 21.3020 - 21.3023

The Commissioner of Insurance adopts new §§21.3001, 21.3010 - 21.3011, and 21.3020 - 21.3023, concerning pharmacy benefits. Sections 21.3010, 21.3011, 21.3022, and 21.3023 are adopted with changes to the proposed text as published in the August 4, 2000 issue of the *Texas Register* (25 TexReg 7318). Sections 21.3001, 21.3020 and 21.3021 are adopted without changes and will not be republished.

The new sections are necessary to implement the provisions of Texas Insurance Code Articles 21.52J and 21.53M, as added by the 76th Legislature, 1999, in Senate Bill (SB) 1030 and House Bill (HB) 2061, respectively. The sections are necessary to allow certain prescription drugs to be available for off-label use for health benefit plan enrollees that suffer from chronic, disabling, or life-threatening illnesses; to permit group health benefit plan enrollees to have access to prescribed formulary drugs until their group health benefit plan's renewal date, even if a prescribed drug has been removed from the formulary; and to permit a group health benefit plan enrollee to appeal, using the independent review process, if a physician prescribes a medically necessary nonformulary drug, and the group health benefit plan refuses to provide coverage for such drug.

Section 21.3001 sets forth the scope and purpose of this subchapter. Section 21.3010 contains definitions relating to coverage of off-label drugs. Section 21.3011 requires health benefit plan issuers to provide coverage for a drug prescribed for an off-label use to treat a covered chronic, disabling, or life-threatening illness or condition if the drug meets certain requirements. The section also requires coverage for any services and, in some

instances, supplies that are medically necessary to administer such a drug. The section also sets forth when a health benefit plan issuer may deny coverage for such drugs.

Section 21.3020 contains definitions relating to the use of a prescription drug formulary by an issuer of a group health benefit plan. Section 21.3021 requires issuers of group health benefit plans using one or more drug formularies to provide the disclosures required by Article 21.52J. This section also sets forth the time limit by which an issuer of a group health benefit plan must respond to a written or oral request from any individual as to whether a specific prescription drug is on a formulary of the group health benefit plan. Section 21.3022 addresses continued coverage of a drug after it has been removed from a group health benefit plan's drug formulary or, if the plan uses a multi-tier formulary, when the drug has been removed from one formulary tier and placed on another formulary tier. The section also addresses group health benefit plan issuers that implement a multi-tier formulary after an enrollee becomes covered for prescription drug benefits. Section 21.3023 permits an enrollee of a group health benefit plan to use the appeal process provided by Article 21.58A when the issuer of a group health benefit plan refuses to provide coverage for a prescription drug not included in a drug formulary.

In response to comments, the following changes have been made to the sections: The term "issuer" was added to §§21.3010 and 21.3011 to clarify that the rules are applicable to issuers of health benefit plans. Section 21.3010(13) was revised to remove the reference to The American Medical Association Drug Evaluation, which is no longer published. The remaining paragraph was renumbered. Section 21.3011(b)(5) was revised to add language clarifying that coverage of a prescription drug may be denied for drugs prescribed for outpatient use if coverage of drugs under the health benefit plan is limited to hospitalization of the enrollee. The revision recognizes that some plans only cover drugs that are prescribed in the course of an enrollee's hospitalization, and allows health benefit plan issuers to deny coverage of drugs when they are not prescribed in the course of the enrollee's hospitalization. Other non-substantive editorial changes were also made. Section 21.3023 was revised to clarify that an appeal under Article 21.58A, §2 is warranted only when there is a disagreement between the plan's issuer and the enrollee's physician as to whether a prescribed drug is medically necessary to treat the enrollee's covered condition. In addition to the changes resulting from comments on the sections, clarification and editorial changes have been made to §21.3022. Language was added to §21.3022(a) for consistency with similar language elsewhere in the rule, and to address the issuer of the health benefit plan. The Commissioner held a public hearing on the proposed sections on September 7, 2000, under Docket No. 2454, at the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

General

Comment: A commenter expressed support for the proposed sections.

Agency Response: The department appreciates the commenter's support. §21.3010(13)

Comment: A commenter suggested that The American Medical Association Drug Evaluation and United States Pharmacopoeia-Drug Information referenced in the definition may no longer be published, and suggested that the department may want to reconsider including them in the section.

Agency Response: At the time the rule was developed, all the listed compendia were available. As of September 7, 2000, The American Medical Association Drug Evaluation compendium is no longer published. Therefore, the department has deleted reference to this compendium from the rule. §21.3011(b)(3)

Comment: A commenter stated that the intent of Article 21.53M is not to interfere with an entity's drug formulary and/or applicable formulary restrictions, and suggested the deletion of paragraph (3). The commenter provided both an unofficial transcript of the March 30, 1999 testimony on HB 2061 from the House Committee on Insurance, and a copy of a letter from a legislative sponsor of HB 2061 to support the commenter's contention that Article 21.53M recognizes the use of drug formularies in both the Insurance Code and the Administrative Code, and recognizes the use of drug formularies and formulary restrictions.

Agency Response: The department has reviewed both the transcript and the letter provided by the commenter. The department continues to believe that §21.3011(b)(3) is consistent with the plain language of Article 21.53M, §3(a) which requires coverage for "any drug" used to treat a chronic, disabling, or life-threatening illness, not just those drugs that are on the plan's drug formulary. It is the department's interpretation that neither the statute nor the rule prohibits a health benefit plan issuer from maintaining a drug formulary. The department believes this interpretation harmonizes the statute and the rule with legislative intent as well as the testimony in the transcript and the letter provided by the commenter. §21.3011(b)(4)

Comment: A commenter suggested adding the following language to the end of the paragraph: "or is not relevant to an ambulatory prescription drug benefit plan (e.g., hospital only drugs)."

Agency Response: The department agrees that it is necessary to clarify that drug coverage may be denied where a plan's issuer covers only drugs prescribed during hospitalization, and has incorporated the commenter's suggested language with modification by adding a new paragraph (5) to §21.3011(b), and has renumbered the remaining paragraph. §21.3011(b)(5)

Comment: A commenter believed this paragraph, which is now (b)(6), allowing denial for a drug the FDA has determined to be a contraindication for the current disease or condition should not be limited to labeled contraindications, but should include contraindications supported by literature, rationalizing that if "off-label" indications for use must be accepted, off-label contraindications for use should be acceptable.

Agency Response: The department disagrees, as the statute does not allow denial of an off-label use of a drug for this reason. §21.3020(1)

Comment: A commenter requested that language be added to clarify that an adverse determination does not include a coverage determination based upon plan conditions unrelated to medical necessity or appropriateness.

Agency Response: The department disagrees with adding the suggested language because it is contrary to the statute. A refusal to provide a drug not currently on the formulary is an adverse determination under the language of the statute. §21.3021

Comment: A commenter stated that disclosure of a drug formulary should be confined to situations in which the formulary status of a drug is a condition of coverage. Otherwise, it is not meaningful to the member and unnecessarily drives up costs.

Agency Response: The department disagrees. The department interprets Article 21.52J §3 to require plan issuers to disclose to enrollees the use of a drug formulary, including an open drug formulary in which all drugs are covered but at different copayment or coinsurance levels depending on what tier level a particular drug is covered in the formulary. This interpretation is consistent with other portions of Article 21.52J, §3. §21.3022

Comment: A commenter stated that requiring an enrollee to continue receiving a drug after it has either been removed or placed in a different tier may be more costly to plans and, ultimately, to enrollees. Additionally, commenters expressed concern that the rules would require each plan to have a separate formulary for each enrollee, depending upon which enrollee used which drug before the drug was removed from the formulary, and that there is already a process for obtaining drugs based on medical necessity. Another commenter stated that many plans may not have the electronic capability to manage the requirement to continue to provide coverage for multi-tier formularies. A commenter stated that placing the rule requirements on plans with three-tier formularies creates disarray and confusion of information that goes out to enrollees and employers when the formulary has changed. The commenter suggested adding a definition of "formulary anniversary date" so that any members who had access to a particular drug or were prescribed a particular drug prior to that date would be grandfathered and would continue to receive the drug at the benefit level as when they were originally prescribed the drug or received the drug. This commenter also requested that the rule be postponed to allow the Texas Legislature to address the commenter's concerns.

Agency Response: Neither the statute nor the rule requires a separate formulary for each enrollee. Article 21.52J, §4 requires that all enrollees of a health benefit plan be allowed to receive drugs removed from the formulary regardless of whether the enrollee had previously been prescribed that drug, and requires continuation of prescription benefits at the same benefit level until the plan's renewal date. It is also the department's position that while issuers may implement anniversary dates, i.e., set dates during the year upon which a given issuer would change its formulary, on their own, a definition of formulary anniversary date is not necessary, and may only cause confusion to persons required to comply with the rule. If an issuer sets a formulary anniversary date, it must still comply with the continuation of benefits requirements of §21.3022. The department disagrees that placing rule requirements on issuers with three-tier formularies creates disarray and confusion of information that is disseminated to enrollees and employers when the formulary has changed. To avoid the possibility of misleading consumers, when HMO issuers of group health benefit plans issue notices relating to drug formulary changes, the HMO issuers should include a statement indicating that, although a drug has been removed from the plan's formulary, enrollees are entitled to continued coverage of the drug for the remainder of the contract year unless the drug was removed by the FDA or the pharmaceutical company for safety reasons. The department also believes that the commenter is interpreting the rule to only require that enrollees receive the drugs at the benefit level in existence when the enrollee joined the health benefit plan, which means different enrollees of the same health benefit plan might receive the drug at different benefit levels depending upon when they each joined the health benefit plan. The department disagrees with this interpretation. It is the department's position that the statute and the rule provide that enrollees of a plan will continue receiving prescription drugs at the same contract benefit level as when the employer and the issuer entered into the contract for the provision of prescription drug benefits for enrollees. As such, the drugs on the formulary at the time of contract must remain available to all enrollees of the health benefit plan at the contracted benefit level until the plan's renewal date. As all enrollees of the plan will be able to receive the same drugs at the same benefit level throughout the plan year, there will be no confusion between enrollees and employers. With respect to the commenter's request to delay postponement of the rule, the rule implements Article 21.52J, the underlying statute which took effect September 1, 1999. Therefore, the department does not believe it is appropriate to postpone the rule.

Comment: Two commenters stated concerns that the rule undermines the formulary system which underlies most pharmacy benefit plans, limiting the benefits offered to enrollees, and impeding a plan's ability to incorporate changes in the marketplace. The commenters stated that the ability to change a formulary is crucial to ensure appropriate access to, and availability of, necessary drug therapies, and to be able to remove harmful drugs. Some commenters expressed concern that restricting use of both traditional and multi-tier formulary management systems will compromise the ability of health plans to provide patients with the most effective and clinically sound medicinal therapies and recommended modifying the rule to allow formulary alterations that are based on sound clinical judgments of interdisciplinary pharmacy and therapeutics committees throughout the contract year.

Agency Response: The department recognizes the importance of pharmacy and therapeutics committees in monitoring an issuer's health benefit plan drug formulary. However, the continuation provisions of this section are required by Article 21.52J, §4. The rule does not prohibit issuers of health benefit plans from notifying providers of safety concerns. An issuer may remove drugs from the formulary, but the statute and rule require coverage to continue to be provided until the health benefit plan's renewal date. §21.3023

Comment: A commenter requested that language be added to clarify that an appeal is warranted only when there is disagreement with the enrollee's physician as to whether a prescribed drug is medically necessary to treat the enrollee's covered condition. The commenter stated that this will avert unnecessary patient appeals and/or any costs associated with amending the rules at a later date.

Agency Response: The department agrees, and has made a change to §21.3023 to clarify that an appeal is warranted only when there is disagreement with the enrollee's physician as to whether a prescribed drug is medically necessary to treat the enrollee's covered condition. Article 21.58A, §§6 and 6A allow an enrollee, a provider, or someone acting on behalf of the enrollee to appeal an adverse determination.

For: Office of Public Insurance Counsel.

For with changes: Paid-Prescriptions, L.L.C.; Merck-Medco Managed Care, L.L.C.; Academy of Managed Care Pharmacy; PCS Health Systems; Humana Health Plans; Employer's Health; a member of the legislature.

Against: None.

The amendments are adopted under the Insurance Code Articles 21.52J and 21.53M and §36.001. Articles 21.52J and 21.53M provide that the commissioner may adopt rules to implement these articles. Section 36.001 provides that the

Commissioner of Insurance may adopt rules for the conduct and execution of the powers and duties of the department only as authorized by statute.

§21.3010. Definitions; Coverage of Off-Label Drugs.

The following words and terms, when used in §§21.3010 - 21.3011 of this subchapter (relating to off-label drugs) shall have the following meanings, unless the context clearly indicates otherwise:

(1) Chronic illness--A disease, syndrome, or condition of expected long duration, showing little change or slow progression.

(2) Contraindication--As defined in Insurance Code Article 21.53M.

(3) Disabling illness--A disease, syndrome, or condition determined by an enrollee's health care practitioner to have caused or have the potential to cause:

(A) a physical or mental impairment that substantially limits, or may limit, one or more of the activities of daily living of the enrollee including, but not limited to, eating, bathing, dressing, grooming, routine hair and skin care, meal preparation, exercising, toileting, and transfer and ambulation;

(B) an impairment substantially limiting an enrollee's cognitive acuity;

(C) an impairment substantially limiting an enrollee's ability to work, home-make, or engage in leisure or educational activities; or

(D) a condition regarded as an impairment by an enrollee's licensed health care practitioner.

(4) Drug--As defined in the Texas Pharmacy Act, Occupations Code §551.003.

(5) Enrollee--A person covered by a health benefit plan.

(6) Health benefit plan--As described in Insurance Code Article 21.53M. This term includes health benefit plans providing coverage for pharmacy benefits only.

(7) Health care practitioner--An advanced practice nurse, doctor of medicine, doctor of dentistry, physician assistant, doctor of osteopathy, doctor of podiatry, or other licensed person with prescriptive authority.

(8) Impairment--Any loss or abnormality of psychological, physiological, or anatomical structure or function.

(9) Indication --As defined in Insurance Code Article 21.53M.

(10) Issuer - Those entities identified in Insurance Code Article 21.53M, §2(a)(1)-(8).

(11) Life-threatening illness--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(12) Off-label drug use--The use of a drug that is approved by the Food and Drug Administration for the treatment of one medical condition, but is used to treat another medical condition, or at different dosage forms, dosage regimens, populations, or other parameters not mentioned in the approved labeling.

(13) Peer-reviewed medical literature--A published scientific study in a journal or other publication in which original manuscripts are published only after they have been critically reviewed by unbiased independent experts in the same field, for scientific accuracy, validity, and reliability, and have been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant extent by a pharmaceutical manufacturing company or an issuer of a health benefit plan.

(14) Standard drug reference compendia--

(A) The American Hospital Formulary Service-Drug Information; or

(B) The United States Pharmacopoeia-Drug Information.

§21.3011. Minimum Standards of Coverage for Off-Label Drug Use.

(a) An issuer of a health benefit plan that provides coverage for drugs shall provide coverage for any drug prescribed to treat an enrollee for a covered chronic, disabling, or life-threatening illness if the drug:

(1) has been approved by the Food and Drug Administration for at least one indication; and

(2) is recognized for treatment of the indication for which the drug is prescribed in:

(A) a standard drug reference compendium; or

(B) substantially accepted peer-reviewed medical literature.

(b) Coverage of a drug required under subsection (a) of this section:

(1) shall include services medically necessary to administer the drug, including any supply medically necessary to administer the drug, if the supply is a covered benefit under the health benefit plan;

(2) may be denied based on a finding that the use of the drug is not medically necessary to treat the enrollee's disease, syndrome, or condition, so long as the finding is not based on the fact that the drug is being prescribed for an off-label use;

(3) may not be denied solely on the basis that the drug does not appear on the formulary. If the issuer of a health benefit plan refuses to provide an off-label drug that is not included in a drug formulary, and the enrollee's physician or provider has determined is medically necessary for an off-label use, the refusal constitutes an adverse determination for purposes of Insurance Code Article 21.58A, §2. An enrollee may appeal the adverse determination under §§6 and 6A of Article 21.58A;

(4) may be denied for a drug prescribed to treat any disease or condition that is excluded from coverage under the health benefit plan;

(5) may be denied for a drug prescribed for outpatient use if coverage of drugs under that particular health benefit plan is limited to the hospitalization of the enrollee; or

(6) may be denied for a drug that the Food and Drug Administration has determined to be a contraindication for treatment of the current disease or condition.

§21.3022. Continuation of Benefits.

(a) An issuer of a group health benefit plan that offers prescription drug benefits shall make a prescription drug that was approved or covered for a medical condition or mental illness available to each enrollee at the contracted benefit level until the group health benefit plan renewal date, regardless of whether the prescribed drug has been removed from the group health benefit plan's drug formulary.

(b) Continuation of benefits for those group health benefit plans that utilize a multi-tier formulary, regardless of whether the

prescription drug has been moved to another formulary tier, shall be the same as that specified in subsection (a) of this section.

(c) An issuer of a group health benefit plan, or its delegated entity, that provides coverage for prescription drugs, and did not utilize a multi-tier formulary at the beginning of the plan year, but which later adopts a multi-tier formulary, shall continue to make a prescription drug that was approved or covered for a medical condition or a mental illness, available to each enrollee at the same contracted benefit level before the multi-tier formulary was adopted, until the group health benefit plan's renewal date.

§21.3023. Nonformulary Prescription Drugs; Adverse Determination.

If the issuer of a group health benefit plan, its delegated entity, or their employees or agents, refuses to provide coverage for a prescription drug that is not included in a drug formulary, and the enrollee's physician or other health care provider with prescriptive authority has determined the prescription drug is medically necessary to treat a condition covered by the enrollee's group health benefit plan, the refusal to provide coverage for the prescription drug constitutes an adverse determination for the purpose of Insurance Code Article 21.58A, §2. An enrollee may appeal the adverse determination under Insurance Code Article 21.58A, §§6 and 6A, and the issuer of the group health benefit plan, and its employees or agents, shall review and resolve the appeal in accordance with those sections.

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

Filed with the Office of the Secretary of State on November 30, 2000.

TRD-200008339
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: December 20, 2000
Proposal publication date: August 4, 2000
For further information, please call: (512) 463-6327

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28 TAC §§21.3002 - 21.3005

The Commissioner of Insurance adopts new §§21.3002 - 21.3005, concerning pharmacy identification cards. Sections 21.3002 - 21.3004 are adopted with changes to the proposed text as published in the July 14, 2000 issue of the Texas Register (25 TexReg 6649). Section 21.3005 is adopted without changes and will not be republished.

The new sections implement the provisions of Senate Bill (SB) 1237, which amended Texas Insurance Code Article 21.07-6, and added Article 21.53L, 76th Legislature, 1999. The sections establish standardized information that must be included on pharmacy identification cards of enrollees in a health benefit plan containing benefits for prescription drugs. Prior to the enactment of SB 1237, Texas law did not require issuers of health benefit plans or pharmacy benefit managers (PBMs) or other administrators to issue pharmacy identification cards or to include standardized information on the pharmacy identification cards, which could result in delays and increased costs in processing pharmacy benefit claims. As a result of SB 1237 and these adopted sections, issuers of health benefit plans, administrators, or PBMs are required to issue pharmacy identification cards and are required to include the standardized information on the cards to help eliminate these problems.

Section 21.3002 sets forth definitions. Section 21.3003 sets forth options that issuers of health benefit plans, PBMs, or administrators may use when issuing standard identification cards to enrollees. This section also lists the information that must be included on a standard identification card for the card to comply with Texas law. The section clarifies that issuers of health benefit plans, PBMs, or administrators are not prohibited from including a magnetic strip or other technological component on the card to transmit information electronically, but still requires the standardized information to be physically printed on the card. Section 21.3004 addresses issuance of standard identification cards in situations where an issuer of a health benefit plan uses a PBM or other administrator. This section also requires a PBM or administrator that administers an issuer's health benefit plan to enter into an agreement with the issuer as to which party will issue the standard identification card to enrollees. Section 21.3005 sets forth effective dates for issuing standard identification cards in accordance with §6 of SB 1237.

In response to comments, the following changes have been made to the sections: A definition of "effective date" has been added at §21.3002(4), and the remaining paragraphs have been renumbered. A definition of "effective date" has been added to clarify that the effective date of coverage is the date that the health benefit plan's current prescription drug benefit levels became effective, or the date the subscriber's coverage first became effective, whichever is later. Section 21.3003(b)(3) has been revised to clarify that standard identification cards must contain the name or logo of the administrator or PBM that is administering the pharmacy benefits if different from the health benefit plan. Section 21.3003(b)(6) has been revised by replacing the phrase, "the appropriate person" with "an appropriate person" to clarify that the section does not require the telephone number of a specific person for purposes of obtaining information relating to the pharmacy benefits under the health benefit plan. The revision is also made for consistency with Articles 21.07-6 and 21.53L which use "an" instead of "the." Section 21.3003(b)(7) has been revised to clarify that in addition to the copayments or coinsurance amounts for each benefit level of the formulary, the card may include language such as "variable" to indicate plan designs or limitations not fully reflected in the copayment/coinsurance disclosure. Section 21.3004(c) and (d) has been revised to clarify that the requirements of §21.3005(a) and (b) apply in conjunction with the requirements of §21.3004(c) and (d). The Commissioner held a public hearing on the proposed sections on September 7, 2000, under Docket No. 2453, at the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

General

Comment: As provided in §2001.030, Government Code, a commenter requested a statement by the department of the principal reasons for and against adoption of the proposed rule.

Agency Response: The department believes that the order adopting the rules sets out the principal reasons for adoption of the rules. The rationale against adopting all, or portions, of the rules are detailed in the Summary of Comments and Agency's Response to Comments. The principal reason for adopting the proposed rules with changes and for overruling the considerations urged against adoption is that the rules implement the statute and provide flexibility in their implementation where allowed, without placing overly burdensome requirements on

those required to comply with the rules. Additionally, many of the concerns raised by commenters have been addressed by the department in the adoption of the rules by making changes to the rules where appropriate. In those instances where changes were not made, the department believed that either the statute directly addressed the commenter's concerns, or that the change could not be made and still remain within the legislative parameters of SB 1237.

Comment: Many commenters generally supported the rules, and believed the statute and rule are beneficial to pharmacists and enrollees. Several commenters recognized the department's efforts to reduce unnecessary administrative burdens and thereby increase pharmacists' opportunity to ensure quality patient outcomes. Inasmuch as there is a shortage of pharmacists, but more plans, more drugs to dispense, and more prescriptions to fill, several commenters affirmed the necessity of requiring a standard pharmacy benefit card and the resulting benefits.

Agency Response: The department appreciates the commenters' support.

Comment: Some commenters disagreed generally with the rules and the assertions made in the Public Benefit/Cost Note that there will be no economic impact to persons required to comply with the rules. Other commenters disagreed that the sections will have no adverse economic impact on "issuers of micro (or macro) health benefit plans," administrators, PBMs, and enrollees. One of the commenters cited such costs as retooling of machines, additional machines, and staffing requirements to print and prepare the cards. Another commenter suggested that the Public Benefit/Cost Note should be changed to state that the cost to produce a card and mail it to the enrollee is approximately $1.00 per card. The commenter also stated that if the issuer of the cards has a large enrollee population, the cost of issuing new cards and multiple cards can become extremely expensive, and will eventually impact the cost of services to enrollees.

Agency Response: The department disagrees. The department believes that there will be no adverse economic impact as a result of the rule because any costs are the result of the enactment of SB 1237 which requires issuance of a standard pharmacy card, and also sets forth the items which, at a minimum, must be printed on the card. With respect to the commenter's concerns about cost, the legislature has mandated that cards be issued. Therefore, it would be inappropriate for the rule to waive the requirement to issue cards as required by the statute. Enrollees were not addressed in the cost note because the cost note, by virtue of the Texas Government Code §2001.024(a)(5)(B), is directed toward persons required to comply with the rule, and enrollees are not persons required to comply with the rule.

Comment: A few commenters expressed concerns about potential added expenses associated with issuing standard identification cards, and suggested that the rule be changed to support issuance of cards on a voluntary, non-mandated basis.

Agency Response: The department disagrees. The card cannot be issued on a voluntary, non-mandated basis because Articles 21.07-6 and 21.53L require pharmacy benefit cards to be issued to "each enrollee."

Comment: One commenter believed that the regulations should recognize and accept the voluntary ID Card Implementation Guide developed by the National Council for Prescription Drug Programs (NCPDP) and thus provide for national standards. This commenter also noted that the NCPDP guide considers some elements required by the rules to be non-mandatory (i.e., dependent information, copayment or coinsurance amounts, and effective date of coverage), whereas the rule requires these items of information. The commenter also stated that the rule should allow compliance with the NCPDP as this would provide flexibility for plans to come into compliance with diverse statutes and regulations across business regions.

Agency Response: The department recognizes the benefit of national standards, but disagrees that the information can be non-mandatory because the requirements of Articles 21.07-6 and 21.53L specifically address the items of information that must, at a minimum, be included on pharmacy benefit cards. Where possible, the department has allowed flexibility in the rule while still implementing the requirements of the articles. §21.3002(a)(5)

Comment: One commenter suggested changing the definition of "enrollee identification card" to read, "A printed card issued to enrollees of a health benefit plan that includes all necessary information to allow an enrollee to access all coverage under the health benefit plan and for a provider to process any subsequent claims."

Agency Response: The department disagrees with the suggested change because the proposed definition is sufficient to define enrollee identification card. The suggestion could result in either an unnecessary volume of information, or a lack of information, on the card such that the overall intent of the statute is negated. §21.3003(a) & (b) Comment: Some commenters were concerned about additional costs related to issuing and updating cards, and contended that costs related to the initial and on-going printing, handling, and mailing of these cards are not insignificant. One commenter expressed concern regarding any requirements to continually make changes to the card format, as well as the additional expense for employers, consumers, and health plans as a result.

Agency Response: The department recognizes that there may be costs associated with issuing and updating the cards but notes that those costs are attributable to the statute. Based on legislative history and comments on the rule, it is the department's determination that the intent of Articles 21.07-6 and 21.53L is to ensure that enrollees possess standardized cards usable by pharmacists to help reduce the time spent submitting claims. The department believes the statute requires the card to be updated whenever the information on the card changes so that pharmacists who need the information have the most current and accurate information possible. §21.3003(b)(1)

Comment: One commenter supported the need for dependent name and identification code information on pharmacy benefit cards, and noted that some issuers of health benefit plans identify individuals within a family differently than other health benefit plans. This commenter affirmed that this information is required to properly process pharmacy benefits claims, and is needed to reduce the time and cost associated with guessing the information when it is not readily available or apparent from the enrollee, subscriber, or dependent. The commenter also stated that some cards currently in circulation have this information on the card. Several other commenters expressed concerns or disagreement with the requirement to include enrollee names on the identification cards; to include enrolled dependent names on the cards; or to include either the enrollee or dependent name on the cards. Reasons given by the commenters included: the information is not required by Articles 21.07-6 and 21.53L; only

the group number of the enrollee is required by statute; identification cards contain a subscriber/member identification number and the subscriber/member name, but do not always include the name of each covered dependent; requiring the names of dependents on the card does not ensure eligibility at the time the card is presented to the pharmacy, and only electronic transactions can accomplish this; some insurers require the covered individual to self-file for reimbursement, thus the dependent name on the card is not necessary; the dependent name is not always required for benefit adjudication; the requirement creates an unnecessary administrative expense, is costly, and is impractical due to space limitation on the card; is not necessary given current technology; and allows minors to obtain certain drugs directly from a pharmacist.

Agency Response: Articles 21.07-6 and 21.53L require the card to be issued to "each enrollee." The department interprets this language to include enrolled dependents, because at the time SB 1237 was enacted, cards routinely contained, and still contain, both the name and identification number of enrollees. As such, it is the department's position that the statutes did not expressly address names on the cards because it was assumed de facto. It is also the department's position that to issue a card without a name could create confusion because a card without a name would not identify who is covered, and could also allow persons who are not covered by the plan to attempt to use the card to improperly access prescription drug benefits to which they are not otherwise entitled. Additionally, commenters stated that pharmacists need the enrolled dependents' names and corresponding identification codes so that they are not forced to guess what the corresponding codes are for these individuals, a problem the statute is intended to address. The department also recognizes that electronic transactions are used to process claims and to determine eligibility; but for pharmacists to submit a successful electronic claim, pharmacists need both the name and identification code for each enrollee. The sections are written in such a way as to provide the option to either issue two cards containing all names of enrollees including enrolled dependents, or to issue a separate card to each enrollee including enrolled dependents. The department believes this option promotes flexibility. The statute did not provide an exception for insurers that require covered individuals to self-file for claims. Additionally the department's research reveals no law that expressly prohibits a prescription from being dispensed directly to a minor. §21.3003(b)(2) & (3)

Comment: A commenter noted that the statutory language of Articles 21.07-6 and 21.53L requires the name and logo of both the health benefit plan providing pharmacy benefits, and the PBM or administrator administering pharmacy benefits in relation to a pharmacy benefit card. The commenter requested clarification regarding use of "if applicable" language in the paragraphs. The commenter interprets the language to allow health benefit plan that contract with a PBM to adjudicate claims online, but retains authority over complaints, to put only the health benefit plan's name on the card, the identification number of the PBM so that the pharmacist knows who is administering claims payment, and the health benefit plan's telephone number for complaints.

Agency Response: The department disagrees with the commenter's interpretation. SB 1237 enacted §19A of Article 21.07-6, which addresses administrators and PBMs, and Article 21.53L which addresses issuers of health benefit plans. The rule implements SB 1237 in its entirety and, as such, addresses all of these entities. The proposed rule attempted to recognize that not all issuers of health benefit plans use the services of an administrator or PBM; hence, use of the "if applicable" language. A purpose of the rule is to provide standard information on a card to allow a pharmacist experiencing claims difficulties to be able to contact the PBM to obtain necessary information to successfully process the claim. Since the PBM adjudicates claims for its client, the issuer of a health benefit plan, it appears that if the pharmacist has technical difficulty processing a claim, the pharmacist will need relevant information to contact the administrator or PBM. As such, an issuer of a health benefit plan that uses an administrator or PBM must include the administrator's or PBM's name on the card. To clarify the department's interpretation, the department changed §21.3003(b)(3). The department also notes that the rule does not prohibit the issuer of a health benefit plan from also including its telephone number for the reporting of complaints. §21.3003(b)(5)

Comment: Several commenters stated that inclusion of the effective date of coverage on the card will do nothing to accomplish the objectives stated in the statute, is unnecessary, and will increase costs which will be borne by consumers in the form of increased premiums or decreased availability of affordable coverage. A commenter stated that the only date of real value would be the expiration date of the card, which would not be predictable at the time of the card's printing. A few commenters recommended that the paragraph be amended to read, "original effective date" to prevent unnecessary expense of reprinting cards for which eligibility is renewed continuously on a month-to-month or quarterly basis, and noted that technology already allows the pharmacist to determine when eligibility has expired. Other commenters recognized that the effective date is required by the statute, but noted that the information is useless during claims processing as it does not guarantee current or future eligibility and only consumes space on the card.

Agency Response: The department understands the concerns that the effective date is generally not used by pharmacists to process pharmacy claims, but the effective date is required by Articles 21.07-6 and 21.53L. The department has addressed the commenter's concerns by adding a definition of "effective date" to §21.3002. The definition developed is useful, meets statutory intent, and provides a date that allows one to determine how current the card is. §21.3003(b)(6)

Comment: One commenter recommended changing this paragraph to prevent any confusion about providing the telephone number of a specific person.

Agency Response: The department agrees, and has changed paragraph (6) to clarify that the telephone number does not refer to a specific person.

Comment: Some commenters suggested changing the language to read as follows: "a telephone number of the appropriate person for purposes of obtaining information and/or technical support relating to the pharmacy benefits provided under the health benefit plan."

Agency Response: The department disagrees with the suggested change and believes the suggestion could cause additional confusion. Such language would not make it clear whether "technical support" was for claims software issues, or technical support for pharmacy claims, or some other purpose. §21.3003(b)(7)

Comment: Several commenters recommended either deleting the copayment/coinsurance provision or limiting it to generic and brand-name information only. These commenters stated that requiring inclusion of copayment or coinsurance information on the

card will be impossible to comply with because of modern, sophisticated benefit designs, as well as impractical to accommodate on a standard sized card. The commenters noted that requiring each level of copayment information for drug formularies is unnecessary because the information is immediately transmitted to the PBM or administrator or health benefit plan electronically, and pharmacists will collect the amounts associated with the electronic response, not the amount on the card. The commenters also objected to the requirement that cards be reissued upon a change in information as people frequently change jobs or relocate, which results in additional costs. Several commenters suggested use of the term "variable" or other similar language in lieu of the current requirement. A commenter stated that inclusion of copayment/coinsurance levels will encourage Texas consumers to gravitate toward mail order service, and in doing so, will penalize Texas retail pharmacists and consumers. The commenter stated that the ability to collect variable copays at the point of sale remains a significant advantage that local retail pharmacists maintain over mail-order pharmacists.

Agency Response: The department agrees in part and disagrees in part. The statutes specify which information, at a minimum, must be on the card. As such, the department has attempted to balance the concerns of space limitations, while at the same time meeting the requirements of the statute. Because the department recognizes that providing all information for all possible plan designs is not feasible, it has changed subsection (b)(7) to clarify that a card may, in addition to disclosing the copayment/coinsurance amount for generic, brand-name and each tier level of the drug formulary, include terminology such as "variable." For example, a plan using a three-tier formulary with $5/$20/$35 copayments but with a dollar limitation of $500 for the first tier, $1000 for the second tier, and $2000 for the third tier would indicate "$5/$20/$35" on the card, and could also include language to reflect limitations or plan designs not fully reflected in the copayment disclosure, such as "Generally $5/$20/$35" or "$5/$20/$35 Subject to Plan Maximums." The department disagrees with the commenter's contention that inclusion of copayment/coinsurance information on the cards will encourage Texas consumers to switch to mail-order pharmacies. Neither the statute nor the rule changes how claims are processed by pharmacists, and as such, does not create situations that make mail-order pharmacies either more or less attractive to consumers.

Comment: A commenter stated that requiring inclusion of copayment or coinsurance information on the card may encourage fraud against enrollees and insurers, and will encourage circumvention of central profiling and DUR (Drug Utilization Review), thereby precipitating potentially hazardous and costly health consequences. This commenter also stated that inclusion of basic copay information on the card will not result in a more efficient and expeditious processing of claims; will not reduce wait time for enrollees having prescriptions filled; will not increase disclosure of benefits to enrollees; and will not increase the amount of time that pharmacists will be able to spend filling prescriptions and advising patients.

Agency Response: The department does not believe the inclusion of this information on the card will encourage fraud or lead to circumvention of central profiling and DUR. With respect to the commenter's statements that this information will not result in a more expeditious processing of claims, etc., the department believes the commenter is referring to the Public Benefit/Cost Note contained in the preamble to the proposed rule. The public benefits stated in the Public Benefit/Cost Note refer to the general benefits of the rule as a whole, and are not in reference to any specific item of information required to be included on the card. §21.3003(b)(8)

Comment: A commenter commended the department for including language in §21.3003(b)(8) that clarifies that the International Identification Number (IIN) is the same as and is often referred to as the Bank Identification Number (BIN). A few commenters stated that requiring use of the BIN before implementation of the federal administrative simplification rule mandated by the Health Insurance Portability and Accountability Act will impose additional unnecessary expenses on plans, employers, and consumers. One commenter noted that some cards currently in circulation already contain this number.

Agency Response: The department appreciates the commenter's acknowledgment of the BIN. The department does not agree with other commenters that use of the IIN will impose additional unnecessary expenses. Article 21.07-6 requires the IIN, which is the same as the BIN. Additionally, the federal regulations to which the commenters refer have not been finally published.

Comment: A commenter stated concerns about the amount of time it will take for a company to reprogram its information systems to include necessary information for printing the IIN on prescription cards. The commenter stated that each time a company reprograms its information systems to include an element on the card, it is costly and time-consuming. The commenter cited one instance in which a company cited a cost of $32,000 to add the group effective date to the card. Because it will take a company time to reprogram its information systems, the commenter requested that the effective date for the administrator or prescription benefit manager to have its IIN printed on its card be no sooner than September 1, 2000 and applicable to policies delivered or issued for renewal on or after January 1, 2001.

Agency Response: The department disagrees, and directs the commenter to §21.3005 with respect to the commenter's request to delay the effective date of the rule which incorporates §6 of SB 1237 and sets forth the dates for compliance.

Comment: A commenter suggested adding an additional paragraph (9) as follows: "as applicable, all other information required by the health benefit plan or PBM to bill a health benefit plan."

Agency Response: The department disagrees. The commenter's suggestion could result in an unnecessary volume of information required to be printed on the card. Other commenters have stated concerns about the lack of space on the card available for printing additional items of information not currently included on some cards. §21.3004

Comment: A commenter stated that the amount of information required relating to pharmacy benefits should not negate the purpose of the card which is to provide the plan participant with evidence of insurance that is useful for all providers.

Agency Response: The department recognizes the commenter's concerns, but believes that the sections do not negate the statutory intent. The department has considered the requirements of the statute and balanced the requirements of the sections with the overall intent of Articles 21.07-6 and 21.53L. §21.3004(a)

Comment: One commenter stated that currently plans generally issue a single multi-purpose card to subscribers, and requests the flexibility to continue this practice.

Agency Response: Section 21.3004 allows an enrollee identification card to fulfill the requirements of a standard identification card, so long as the required information appears on the enrollee identification card. A single multi-purpose card may be issued so long as it meets the requirements of the statute and rule. §21.3004(c) & (d)

Comment: A commenter noted that the regulations require health benefit plans and PBMs or administrators to issue pharmacy identification cards within 30 days after the "final step of this rule taking effect." The commenter suggested the department consider allowing implementation to be at the next renewal date of the health benefit plan.

Agency Response: The department understands the commenter's concerns, but directs the commenter to Article 21.07-6, §19A(c), which sets forth the 30-day requirement. The department also directs the commenter to §6 of SB 1237, and §21.3005(a) and (b), all of which address time frames for issuing cards in compliance with the statute and the rule. The department has changed §21.3004(c) and (d) to clarify that the requirements of §21.3005(a) and (b) apply to §21.3004(c) and (d). §21.3005(a) & (b)

Comment: One commenter suggested adding language at the end of both subsections (a) and (b) to state, "...but at no time later than two years from the effective date of this subsection." Another commenter suggested the department consider proposals that will allow health benefit plans, administrators, and PBMs to issue new cards during the enrollee's earliest enrollment period. The commenter also noted that it may be necessary to adopt a final compliance date for enrollees that will not cycle through the enrollment process within a reasonable time frame.

Agency Response: The department disagrees. The commenters' suggested changes are inconsistent with the statute which addresses when new cards must be issued. Section 21.3005(a) and (b) merely implement §6 of SB 1237 to assure consistency between the statute and the rule.

For, with changes: Texas Pharmacy Association; Texas Federation of Drugstores; Texas Association of Life and Health Insurers; Advanced Paradigm, Inc.; Humana Health Plans; Employers' Health; Lamar Plaza Drugstore; Legend Pharmacies; Texas Association of Health Plans; PCS Health Systems; PAID Prescriptions; BlueCross/BlueShield of Texas; Pharmaceutical Care Management Association; Health Insurance Association of America; Academy of Managed Care Pharmacy; Merck-Medco Managed Care, L.L.C.; a member of the legislature.

Against: An individual.

The sections are adopted under Insurance Code Articles 21.07-6, 21.53L, and §36.001. Article 21.07-6 provides that the commissioner may adopt rules to implement the provisions of the article, and requires the commissioner to adopt standard information to be included on a standard identification card. Article 21.53L provides that the commissioner shall adopt rules necessary to implement the provisions of the article. Section 36.001 provides that the Commissioner of Insurance may adopt rules for the conduct and execution of the powers and duties of the department only as authorized by statute.

§21.3002. Definitions; Pharmacy Identification Cards.

The following words and terms, when used in §§21.3002 - 21.3005 of this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Administrator -- As defined in Insurance Code Article 21.07-6, §1(1), but does not include an administrator for a self-funded employee welfare benefit plan covered by the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1002(1)(A).

(2) Drug -- As defined in the Texas Pharmacy Act, Occupations Code §551.003.

(3) Drug formulary -- A list of drugs for which a health benefit plan provides coverage, approves payment, or encourages or offers incentives for physicians or other health care providers to prescribe.

(4) Effective date -- The date that the health benefit plan's current prescription drug benefit levels became effective, or the date the subscriber's coverage first became effective, whichever is later.

(5) Enrollee -- A person covered by a health benefit plan.

(6) Enrollee identification card -- A printed card issued to enrollees of a health benefit plan that includes all necessary information to allow an enrollee to access all coverage under the health benefit plan.

(7) Health benefit plan -- As described in Insurance Code Article 21.53L, including a health benefit plan providing coverage for pharmacy benefits only. This definition includes the term, "plan," as defined in Insurance Code Article 21.07-6, §1(6), but does not include a self-funded employee welfare benefit plan covered by ERISA, 29 U.S.C. §1002(1)(A).

(8) Identification code -- Any unique code utilized by an issuer of a health benefit plan, administrator, or pharmacy benefit manager that identifies and differentiates amongst enrollees.

(9) Issuer -- Those entities identified in Insurance Code Article 21.53L, §2(a)(1) - (8).

(10) Pharmacy benefit manager -- As defined in Insurance Code Article 21.07-6, §1(9), but does not include a pharmacy benefit manager for a self-funded employee welfare benefit plan covered by ERISA, 29 U.S.C. §1002(1)(A).

(11) Pharmacy benefits -- Coverage in a health benefit plan for prescription drugs that are ordinarily and customarily dispensed by a pharmacy or pharmacist licensed under the Texas Pharmacy Act, Occupations Code §551.001 et seq.

(12) Standard identification card -- A printed card containing the written information required by §21.3003(b) of this subchapter (relating to Standard Identification Cards).

(13) Subscriber -- The individual who is the contract holder and who is responsible for payment of premiums to the issuer of an individual health benefit plan; or the individual who is the certificate holder and whose employment or membership status, except for family dependency, is the basis for eligibility for enrollment in a group health benefit plan.

§21.3003. Standard Identification Cards.

(a) The issuer of a health benefit plan that provides pharmacy benefits, or a pharmacy benefit manager or administrator issuing standard identification cards to enrollees shall issue standard identification cards as follows:

(1) For a subscriber who is an enrollee, and has no enrolled dependents, a single card shall be issued to the subscriber, with additional cards available upon request.

(2) For a subscriber who is an enrollee, and who has enrolled dependents, either:

(A) a card shall be issued to the subscriber and to each of the enrolled dependents, with additional cards available upon request; or

(B) two cards shall be issued to the subscriber for use by the subscriber and all enrolled dependents, with additional cards available upon request.

(3) For coverage under an individual health benefit plan in which the subscriber is not an enrollee, or for coverage under a group health benefit plan which is continued by an enrollee pursuant to Insurance Code Article 3.51-6, §3B, either:

(A) a card shall be issued to each enrollee, with additional cards available upon request; or

(B) two cards shall be issued for use by all enrollees, with additional cards available upon request.

(b) Each standard identification card issued shall, at all times the card is in effect, include current information as follows:

(1) the enrolled subscriber's or enrolled dependents' names and identification codes, as follows:

(A) For cards issued pursuant to subsection (a)(1) of this section, the enrolled subscriber's name and identification code;

(B) For cards issued pursuant to subsection (a)(2)(A) of this section, the enrolled subscriber's name and identification code on the enrolled subscriber's card, and on each enrolled dependent's card, the name and identification code of the enrolled dependent to whom the card will be issued;

(C) For cards issued pursuant to subsection (a)(2)(B) of this section, the names and identification codes of the enrolled subscriber and the names and identification codes of all the enrolled dependents;

(D) For cards issued pursuant to subsection (a)(3)(A) of this section, on each enrolled dependent's card, the name and identification code of the enrolled dependent to whom the card will be issued;

(E) For cards issued pursuant to subsection (a)(3)(B) of this section, the names and identification codes of all enrolled dependents;

(2) if applicable, the name or logo of the issuer;

(3) the name or logo of the administrator or pharmacy benefit manager that is administering the pharmacy benefits, if different from the health benefit plan;

(4) as applicable, the group number applicable to the enrollee(s) covered by a group health benefit plan or the policy number or evidence of coverage number applicable to the enrollee(s) covered by an individual health benefit plan;

(5) the effective date of coverage;

(6) a telephone number of an appropriate person for purposes of obtaining information relating to the pharmacy benefits provided under the health benefit plan;

(7) as applicable, the corresponding copayment or coinsurance for generic and brand-name drugs; provided that, if the health benefit plan uses a drug formulary with benefit levels in addition to generic and brand-name prescription drugs, the card shall include the corresponding copayments or coinsurance for each tier level of the drug formulary. In addition to disclosure of each benefit level, the card may include a term such as "variable," to reflect benefit designs not fully revealed by the drug formulary tier disclosure; and

(8) as applicable, the International Identification Number, also known as the Banking Identification Number, assigned to the administrator or pharmacy benefit manager by the American National Standards Institute.

(c) Nothing in this section prohibits the issuer of a health benefit plan, or an administrator or pharmacy benefit manager, from issuing a standard identification card containing a magnetic strip or other technological component enabling the electronic transmission of information, provided that the information required by subsection (b) of this section is printed on the card.

§21.3004. Issuance of Standard Identification Cards.

(a) An issuer of a health benefit plan, or an administrator or pharmacy benefit manager, is not required to issue a standard identification card in addition to an enrollee identification card if:

(1) the enrollee identification card contains the information required by §21.3003(b) of this subchapter (relating to Standard Identification Cards); and

(2) the enrollee identification card is issued in accordance with §21.3003(a) of this subchapter and subsections (c) and (d) of this section.

(b) Pursuant to subsection (a) of this section, if a standard identification card is required to be issued, and an administrator or pharmacy benefit manager administers a health benefit plan of an issuer, the administrator or pharmacy benefit manager and the issuer shall enter into an agreement as to which entity will issue the standard identification card in accordance with this subchapter.

(c) Subject to §21.3005(a) and (b) of this subchapter (relating to Previously Issued Identification Cards), when an administrator or pharmacy benefit manager for a health benefit plan is designated or required to issue a standard identification card, the administrator or pharmacy benefit manager shall issue the standard identification card in accordance with this subchapter not later than the 30th calendar day after the date the administrator or pharmacy benefit manager receives notice from the issuer, or from the health benefit plan, that the enrollee is eligible for the pharmacy benefits.

(d) Subject to §21.3005(a) and (b), if the issuer of a health benefit plan is required to issue a standard identification card, the issuer of the health benefit plan shall issue the standard identification card in accordance with this subchapter not later than the 30th calendar day after the enrollee is eligible for pharmacy benefits.

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

Filed with the Office of the Secretary of State on November 30, 2000.

TRD-200008338
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: December 20, 2000
Proposal publication date: July 14, 2000
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.26

The Texas Parks and Wildlife Commission adopts an amendment to §65.26, concerning Managed Lands Deer (MLD) Permits, with changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9420). The change alters subsections (b)(1) and (2) to make clear that the subsection applies only to deer season, alters subsection (b)(2) to clarify that Level II MLD buck permits are not valid during the archery-only open season, and updates citations in subsections (b)(2)(B)(ii) and (b)(3)(B).

The amendment is necessary because the current rule creates closing dates on MLD properties that are earlier, in some cases, than the closing dates for non-MLD properties, which confuses landowners and hunters.

The amendment adjusts the period of validity for Managed Lands Deer periods to be concurrent with the length of existing open general seasons and would clarify that antlerless deer harvested during the archery-only season must be tagged with an MLD antlerless tag.

The department received two comments concerning adoption of the proposed amendment. One commenter opposed adoption, stating that the rule was unlawfully promulgated and that the rule would benefit only landowners with high fences. The department disagrees with the commenter and responds that the rule was promulgated in compliance with the provisions of Government Code, Chapter 2001, and contains no stipulations or conditions whatsoever concerning fencing. No changes were made as a result of the comment.

Texas Wildlife Association commented in support of adoption.

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.

§65.26. Managed Lands Deer (MLD) Permits.

(a) MLD permits may be issued only to a landowner who has a current WMP in accordance with §65.25 of this title (relating to Wildlife Management Plan).

(b) An applicant may request the issuance of any type of MLD listed in this section.

(1) Level 1. Level 1 MLD permits authorize only the take of antlerless white-tailed or antlerless mule deer. A Level 1 MLD permit is valid during any open season in the county for which it is issued, and the bag limit for antlerless deer in that county applies.

(2) Level 2.

(A) Level 2 MLD permits authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 2 MLD:

(i) antlerless permit is valid from the Saturday closest to September 30 through the last Sunday in January and during any open season on the property for which it is issued; (ii) buck permit is valid from the opening day of the general open season in the county for which it is issued through the last Sunday in January and during any open season except the archery-only open season on the property for which it is issued.

(B) On all tracts of land for which Level 2 MLD permits have been issued:

(i) the bag limit shall be five deer, no more than three bucks, regardless of the county bag limit; and

(ii) the provisions of §65.42(b)(8) of this title (relating to Archery-Only Open Season), §65.42(b)(9) of this title (relating to Muzzleloader-Only Open Season), and the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapters I and Q, do not apply.

(C) By acceptance of Level 2 MLD permits a landowner agrees to accomplish at least two habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 2 permits are accepted thereafter. A landowner who fails to accomplish at least two habitat management recommendations of the WMP within three years is not eligible for Level 2 permits the following year, but is eligible for Level 1 MLD permits or may choose to cease accepting MLD permits.

(3) Level 3. Level 3 MLD permits authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 3 MLD permit is valid from the Saturday nearest September 30 through the last Sunday in January and during any open season on the property for which it is issued. On all tracts of land for which Level 3 MLD permits have been issued:

(A) the bag limit shall be five deer, no more than three bucks, regardless of the county bag limit; and

(B) the provisions of §65.42(b)(8) of this title (relating to Archery-Only Open Season), §65.42(b)(9) of this title (relating to Muzzleloader-Only Open Season), and the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapters I and Q, do not apply.

(C) By acceptance of Level 3 MLD permits a landowner agrees to accomplish at least four habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 3 permits are accepted thereafter. A landowner who fails to accomplish at least four habitat management recommendations of the WMP within three years is not eligible for Level 3 permits the following year, but may be eligible for other levels of MLD permits or may choose to cease accepting MLD permits.

(c) The number of MLD permits distributed to a hunter shall be at the discretion of the landowner.

(d) Except for deer taken under an Antlerless and Spike-Buck Control Permit, all deer harvested by MLD permit must immediately be tagged with the appropriate MLD permit and either an appropriate tag from the hunting license of the person who killed the deer or a valid bonus tag.

(e) If a landowner in possession of MLD permits does not wish to abide by the harvest quota or habitat management practices specified by the WMP, the landowner must return all MLD permits to the department by the Saturday closest to September 30.

(f) In the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices impractical or impossible,

the department may, on a case-by-case basis, waive the requirements of this section.

(g) The department reserves the right to deny further issuance of MLD permits to a landowner who exceeds the harvest quota specified by the WMP or who does not otherwise abide by the WMP. A property for which the department denies further permit issuance under this subsection is ineligible to receive MLD permits for a period of three years from the date of denial.

(h) Administratively complete applications received by the department before August 15 of each year shall be approved or denied by October 1 of the same year.

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

Filed with the Office of the Secretary of State on November 30, 2000.

TRD-200008332
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: December 20, 2000
Proposal publication date: September 22, 2000
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS

The Texas Department of Human Services (DHS) adopts the repeal of §3.2601-§3.2605, §3.3501, §3.3502, §3.3503, §3.5003, and §3.5004; adopts amendments to §3.302, §3.3402, §3.4001, §3.4004, §3.4005, §3.4006, §3.4012, §3.5001, §3.5002, §3.5005-§3.5010; and adopts new §3.3501, §3.3502, §3.5003, and §3.5004 without changes to the proposed text in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9423) and will not be republished.

Justification for the repeals, amendments, and new sections is to update rules in response to the expiration of the current EBT contract and the execution of new contracts creating a multi-vendor EBT system.

The department received no comments regarding the adoption of the repeals, amendments, and new sections.

SUBCHAPTER C. THE APPLICATION PROCESS

40 TAC §3.302

The amendment is adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001- 31.0325.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008279
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 1, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER Z. DIRECT MAIL ISSUANCE

40 TAC §§3.2601 - 3.2605

The repeals are adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The repeals implement the Human Resources Code, §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008278
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 1, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER HH. PROGRAM VIOLATIONS

40 TAC §3.3402

The amendment is adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001- 31.0325.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008277

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 1, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER II. REDEMPTION PROCEDURES

40 TAC §§3.3501 - 3.3503

The repeals are adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The repeals implement the Human Resources Code, §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008276
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 1, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108

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40 TAC §3.3501, §3.3502

The new sections are adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The new sections implement the Human Resources Code, §§31.001- 31.0325.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008275
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 1, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER NN. ELECTRONIC BENEFIT TRANSFER

40 TAC §§3.4001, 3.4004 - 3.4006, 3.4012

The amendments are adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The amendments implement the Human Resources Code, §§31.001- 31.0325.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008274
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 1, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER OO. ELECTRONIC BENEFIT TRANSFER (EBT) RETAILER REQUIREMENTS

40 TAC §§3.5001 - 3.5010

The amendments and new sections are adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The amendments and new sections implement the Human Resources Code, §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008272
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 1, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108

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40 TAC §3.5003, §3.5004

The repeals are adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The repeals implement the Human Resources Code, §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on November 29, 2000.

TRD-200008273
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 1, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108

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PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER R. COST-FINDING METHODOLOGY FOR 24-HOUR CHILD-CARE FACILITIES

40 TAC §700.1802

The Texas Department of Protective and Regulatory Services (TDPRS) adopts an amendment to §700.1802, without changes to the proposed text published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10126).

The justification for the amendment is to allow TDPRS the flexibility to pilot new methods of obtaining placements for children who need higher levels of care. Currently, open enrollment for residential child care contracts and a uniform statewide rate based on level of care are used. The rule allows the executive director of TDPRS to pilot competitive procurement and allows a reasonable negotiated rate to be used to match special contract provisions.

The amendment will function by allowing more children in the state of Texas to have placements appropriate to serve their needs, and more children will be in least restrictive placements.

During the comment period, TDPRS received one comment from the Texas Association of Leaders in Children and Family Services in support of the proposal.

The amendment is adopted under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs,

The amendment implements Chapter 1022 of the Acts of the 75th Legislature, §103, which authorizes the department to develop a competitive bidding process for purchasing substitute care services.

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 December 1, 2000.

TRD-200008360
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: December 21, 2000
Proposal publication date: October 6, 2000
For further information, please call: (512) 438-3437

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Department of Protective and Regulatory Services

Title 40, Part 19

The Texas Department of Protective and Regulatory Services (TDPRS) proposes to review Title 40 Texas Administrative Code Chapter 705, Adult Protective Services. This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167.

TDPRS will accept comments regarding whether the reasons for adopting the rules in Chapter 705 continue to exist.

Comments on the review of 40 TAC Chapter 705, Adult Protective Services, may be submitted to Kathleen Dickens at (512) 438-3187, or TDPRS, Texas Register Liaison, Legal Services, P.O. Box 149030, Mail Code E-611, Austin, Texas 78714-9030, or faxed to (512) 438-3022. All comments must be received within 30 days of publication in the *Texas Register*.

TRD-200008364
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: December 1, 2000

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Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 180 concerning Compliance and Practices. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt Chapter 180.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on January 15, 2001 and submitted to Cherie Zavitson, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

Chapter 180. Compliance and Practices

§180.1 Definitions

§180.3 Performance Review of Insurance Carriers

§180.4 Review of Employer Compliance

§180.5 Access to Workers' Compensation Related Records

§180.6 Evidence of Patterns of Conduct

§180.7 Date Administrative Violation Deemed To Have Occurred

§180.8 Notice of Administrative Violation and Penalty

TRD-200008378
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: December 1, 2000

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Adopted Rule Reviews

Texas Department of Insurance

Title 28, Part 1

Pursuant to the notice of proposed rule review published in the *Texas Register*, 25 Tex. Reg. 4196, May 5, 2000, the Texas Department of Insurance has reviewed and considered for readoption, revision or repeal all sections as they existed on May 5, 2000, of the following chapters of Title 28, Part I of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §9-10.13, 76th Texas Legislature, 1999: Chapter 3, Life, Accident and Health Insurance and Annuities; Chapter 11, Health Maintenance Organizations; Chapter 12, Independent Review Organizations; Chapter 23, Prepaid Legal Service; Chapter 25, Insurance Premium Finance; Chapter 26, Small Employer Health Insurance Regulations; Chapter 28, Supervision and Conservation; Chapter 29, Guaranty Acts; Chapter 31, Liquidation; Chapter 33, Continuing Care Retirement Facilities; Chapter 34, State Fire Marshal.

The Texas Department of Insurance considered, among other things, whether the reasons for adoption of these rules continue to exist. TDI received no written comments regarding the review of TDI rules.

As a result of TDI's review, TDI determined that the reasons for adoption of several sections do not continue to exist. Therefore, TDI has repealed §§11.401-11.409 and 11.1701 of Chapter 11, Health Maintenance Organizations. The notice of the proposed repeal of these sections was published in the *Texas Register*, 25 Tex. Reg. 9413, on September 22, 2000. The notice of adopted repeal of these sections was published in the *Texas Register*, 25 Tex. Reg. 11659, on November 24, 2000.

TDI has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with TDI's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

TRD-200008492
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Texas Department of Protective and Regulatory Services

Title 4, Part 19

The Board of the Texas Department of Protective and Regulatory Services (TDPRS) readopts, without changes, Title 40 Texas Administrative Code Chapter 700, Child Protective Services. The proposed review was published in the August 11, 2000, issue of the *Texas Register* (25 TexReg 7790). No comments were received regarding readoption of this chapter.

Chapter 700 satisfies the requirements of the Human Resources Code, Chapter 40, which authorizes the department to adopt rules to facilitate implementation of department programs, and the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. The board has reviewed Chapter 700 and determined that the initial reasons for adoption of this chapter continue to exist. However, TDPRS plans to restructure the chapter in the future and to rewrite the rules to make them easier to read.

This completes the board's review of 40 TAC 700, as required by the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167.

TRD-200008356
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: December 1, 2000

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The Texas Department of Protective and Regulatory Services (TDPRS) adopts the review of Title 40 Texas Administrative Code Chapter 734, Public Information. The proposed notice of review was published in the August 11, 2000, issue of the *Texas Register* (25 TexReg 7790). This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167. No comments were received regarding the readoption of this chapter.

Chapter 734 satisfies the requirements of the Human Resources Code, Chapter 40, which authorizes the department to adopt rules to facilitate implementation of departmental programs. The board has reviewed Chapter 734 and determined that the initial reasons for adoption of this chapter continue to exist. However, as part of the review process, TDPRS is repealing Chapter 734, and proposing new public information rules in new Chapter 702, General Administration. The new rules are the result of extensive revisions to delete redundant or obsolete requirements and to conform with current law and agency policy. The proposed repeals and new sections may be found in the Proposed Rules section of this issue of the *Texas Register*.

This concludes the board's review of 40 TAC Chapter 734, as required by the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167.

TRD-200008355
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: December 1, 2000

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Texas Department of Protective and Regulatory Services

Title 40, Part 19

The Texas Department of Protective and Regulatory Services (TDPRS) adopts the review of Title 40 Texas Administrative Code Chapter 736, Memoranda of Understanding With Other State Agencies. The proposed notice of review was published in the August 11, 2000, issue of the *Texas Register* (25 TexReg 7790). This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167. No comments were received regarding the readoption of this chapter.

Chapter 736 satisfies the requirements of the Human Resources Code, Chapter 40, which authorizes the department to adopt rules to facilitate implementation of departmental programs. The board has reviewed Chapter 736 and determined that the initial reasons for adoption of this chapter continue to exist. However, as part of the review process, TDPRS is repealing Chapter 736, and proposing new rules on memoranda of understanding with other state agencies in new Chapter 702, General Administration. The new rules are the result of extensive revisions to delete redundant or obsolete requirements and to conform with current law and agency policy. The proposed repeals and new sections may be found in the Proposed Rules section of this issue of the *Texas Register*.

This concludes the board's review of 40 TAC Chapter 736, as required by the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167.

TRD-200008348
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: December 1, 2000

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The Board of the Texas Department of Protective and Regulatory Services (TDPRS) adopts the review of Title 40 Texas Administrative Code Chapter 742, Continuing Education. The proposed notice of review was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10201). This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167. No comments were received regarding the readoption of this chapter.

Chapter 742 satisfies the requirements of the Human Resources Code, Chapter 40, which authorizes the department to adopt rules to facilitate implementation of departmental programs. The board has reviewed Chapter 742 and determined that the initial reasons for adoption of this chapter continue to exist. However, as part of the review process, TDPRS is repealing Chapter 742, and proposing new continuing education rules in new Chapter 702, General Administration. The new rules are the result of extensive revisions to delete redundant or obsolete requirements and to conform with current law and agency policy. The proposed repeals and new sections may be found in the Proposed Rules section of this issue of the *Texas Register*.

This concludes the board's review of 40 TAC Chapter 742, as required by the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167.

TRD-200008359
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: December 1, 2000

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.

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.

graphic

Office of the Attorney General

Correction of Error

The Office of the Attorney General published a notice titled "Texas Clean Air Act and Texas Water Code Settlement Notice" in the December 8, 2000, *Texas Register* (25 TexReg 12233).

Due to an error in the text filed by the agency, the fourth paragraph should be changed to read as follows.

"Proposed Agreed Judgment: The judgment permanently enjoins Defendant's painting and abrasive cleaning operations to either comply with the permit by rules in sections 106.433 and 106.452 of Title 30 of the Texas Administrative Code or the operations must be performed under a new source review permit issued in accordance with Chapter 116 of Title 30 of the Texas Administrative Code. The Defendant shall pay Three Thousand Dollars and no cents ($3,000.00) in civil penalties and Two Thousand Dollars and no cents ($2,000.00) in attorney fees. Defendant is also required to pay all cost of court."

TRD-200008495

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of November 23, 2000, through November 30, 2000. The public comment period for these projects will close at 5:00 p.m. on January 7, 2001.

FEDERAL AGENCY ACTIONS

Applicant: Davis Petroleum, Inc.; Location: The project is located in Trinity Bay, SW/4 of State Tract 6-7A, Chambers County. CCC Project No.: 00-0416-F1; Description of Proposed Action: The applicant proposes to drill their No. 2 well.; Type of Application: U.S.A.C.E. permit application #15879(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (§§125-1387).

Applicant: U.S. Department of the Interior, Minerals Management Service; Location: The project is located in the Central Gulf of Mexico. CCC Project No.: 00-0419-F2; Description of Proposed Action: The applicant has submitted a consistency determination for the environmental impacts and assessment of proposed Lease Sale 178. The analysis in the assessment focused on whether new information received since preparation of the multisale Environmental Impact Statement (EIS) would warrant changes in the analysis or conclusions in the EIS.

Applicant: Seneca Resources Corporation; Location: The project site is located in the Freeport Anchorage Area, Galveston Area Block 310-L, Gulf of Mexico, offshore Texas, approximately 10 1/2 miles southeast of Freeport. CCC Project No.: 00-0420-F1; Description of Proposed Action: The applicant proposes to both modify the permit and extend the time to conduct work under Permit 20140(01) to December 31, 2005. The applicant also requests authorization to add a cellar deck level extension. Additionally, the applicant proposes to increase the number of wells that may be drilled from the existing surface structure, from four wells to six wells. Type of Application: U.S.A.C.E. permit application #20140(02) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Sabco Operating Company; Location: The project site is located in Corpus Christi Bay in State Tracts 14-16, 45-58, 60-65, and 69-71. CCC Project No.: 00-0423-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. Type of Application:

U.S.A.C.E. permit application #22174 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: The Houston Exploration Company; Location: The project site is located in the Galveston Anchorage Area, Galveston Area Block 144, approximately 12 miles southeast of Galveston in the Gulf of Mexico. CCC Project No.: 00-0424-F1; Description of Proposed Action: The applicant proposes to amend Department of the Army Permit 21566 to realign a part of the authorized pipeline. Type of Application: U.S.A.C.E. permit application #21566(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

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. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200008479
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: December 6, 2000

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Comptroller of Public Accounts

Notice of Award

Notice of Awards: Pursuant to Chapter 2305, Texas Government Code, the Comptroller of Public Accounts (Comptroller) State Energy Conservation Office (SECO) announces this notice of contract awards in connection with Request for Proposals (RFP #108g) to implement energy education programs in Texas schools.

The notice of request for proposals was published in the July 21, 2000, issue of the *Texas Register* at 25 TexReg 7007.

Two contracts were awarded: (1) Children's Museum in New Braunfels, 651 Business Loop 35-N, Suite 530, New Braunfels, Texas 78130. The total amount is not to exceed $99,882.00. The term of the contract is September 1, 2000 through August 31, 2001. (2) Texas Energy Education Development Project, Inc., 8410-A Lyndon Lane, Austin, Texas 78729. The total amount is not to exceed $97,675.00. The contract term is September 1, 2000 thru August 31, 2001.

TRD-200008490
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: December 6, 2000

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Notice of Contract Amendment

In accordance with Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract renewals.

The notice of issuance of the request for proposals (RFP #084a) for professional services from qualified firms was originally published in the October 15, 1999, issue of the *Texas Register* (24 TexReg 9084).

The contractors will provide energy engineering assistance to the Comptroller's Local Government Energy Management Program. The contractors will analyze utility data, providing on-site energy assessments, and prepare facility energy management master plans for target audiences.

The contracts are renewed as follows: (1) Estes, McClure & Associates, Inc., 308 West Way, Tyler, Texas 75703. The total amount of this contract is $200,000. The term of this contract is December 20, 2000 through August 31, 2001. (2) Texas Energy Engineering Services, Inc., 1301 South Capital of Texas Highway, #B325, Austin, Texas 78746. The total amount of this contract is $200,000. The term of this contract is December 21, 2000 through August 31, 2001.

The renewals by amendment extend the term of the contracts for an additional year through August 31, 2001.

TRD-200008491
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: December 6, 2000

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 12/11/00 - 12/17/00 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 12/11/00 - 12/17/00 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-200008454
Leslie L.Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 5, 2000

♦ ♦ ♦

Texas Department of Criminal Justice

Notice of Award

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the Texas Youth Commission Fiscal Year 2000-2001 Design Program, Requisition Number: 696-FD-0-R002.

The Contract was awarded to Parkhill, Smith and Cooper, as a partial award for a dollar amount of $46,300.00, with 24% awarded to a HUB vendor.

TRD-200008453

Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: December 5, 2000

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Office of the Governor

Request for Proposals

Pursuant to Subchapter A, Sections 2254.001 et seq., Texas Government Code, the Governor's Office of Budget and Planning invites professionals with demonstrated competence and qualifications and documented expertise in the field of indirect cost recovery and cost allocation plans for governmental units to submit proposals to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, a cost allocation plan for the data processing services of the State Comptroller's Office for the fiscal year ending August 31, 2002 based on expenditures during the fiscal year ending August 31, 2000.

Proposers will be expected to develop a cost allocation plan for the State Comptrollers' data processing services that enables the state to recover the maximum indirect costs possible from federal programs. The contractor selected will be responsible for all aspects of the plan, including obtaining raw cost and statistical data, identifying allocable costs, and preparing and submitting the plan. The data produced by the plan must be in a format that can be readily integrated into the consolidated statewide cost allocation plan for FY2002. Proposals must include a description of the system to be used to extract allowable costs from the State Comptroller's data processing system and for allocating such costs. Contractor may be required to prepare alternative allocation tables using different allocation bases to demonstrate maximum feasible recovery options.

As a component of the cost allocation plan, the contractor selected must identify costs associated with providing data processing services to each internal user within the Comptroller's office including statewide financial systems. This component must identify costs allocated to each statewide financial system that state agencies use in carrying out their programs and the type and dollar amount of services used. The contractor selected will be responsible for all aspects of this component, including obtaining raw cost and statistical data and identifying allocable costs. Proposals must include a description of the system to be used to extract allowable costs for data processing services and for allocating such costs.

A complete set of the work papers used to prepare the plan must be kept and provided to the Governor's Office upon request.

The Governor's Office of Budget and Planning will evaluate each proposal and reserves the right to reject any and all proposals. The state assumes no responsibility for expenses incurred in preparing responses to this solicitation. If selected, the contractor will be chosen on the basis of proposal content, the proposer's demonstrated experience, competence, knowledge and qualifications.

A copy of the FY2000 consolidated statewide cost allocation plan may be viewed or downloaded from the Internet at "http://www.governor.state.tx.us/Grants/guidelines.html#Statewide Cost Allocation Plans" or may be obtained by contacting Denise Francis, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711 (telephone 512-305-9415).

All proposals must be received at the above address no later than 5:00 p.m., December 29, 2000. Proposers will be expected to deliver two (2) copies of each proposal.

TRD-200008497
Kevin Van Oort
Assistant General Counsel
Office of the Governor
Filed: December 6, 2000

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Request for Proposals for the FY 2002 State of Texas Federal and State Cost Allocation Plan

Pursuant to Subchapter A, Sections 2254.001 et. seq., Texas Government Code, the Governor's Office of Budget and Planning invites professionals with demonstrated competence and qualifications and documented expertise in the field of indirect cost recovery and cost allocation plans for governmental units to submit proposals to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, the State of Texas' consolidated statewide cost allocation plan for the fiscal year ending August 31, 2002. These consultant services have been provided previously by the consulting firm of DMG/MAXIMUS. Unless a clearly superior proposal is received from a different proposer, the Governor's Office intends to award the contract for the FY2002 plan to DMG/MAXIMUS, subject to negotiation of a fair and reasonable price. Proposers will be expected to develop a cost allocation plan that enables eligible state agencies to recover the maximum indirect costs possible from federal programs. The contractor selected will be responsible for all aspects of the plan, including obtaining raw cost and statistical data, identifying allocable costs, preparing and submitting the plan, and negotiating the final plan with the federal government for state agency use during the state fiscal year beginning September 1, 2001. Proposals must include a description of the system to be used to extract allowable costs from central government agencies and for allocating such costs. Contractor may be required to prepare alternative allocation tables using different allocation bases to demonstrate maximum feasible recovery options. As a component of the cost allocation plan, the contractor selected must also identify the costs of providing statewide support services to each state agency. This component must identify state agencies that use services from state central services agencies (for example, auditing, accounting, centralized purchasing, and legal services) in carrying out their programs and the type and dollar amount of services used. The contractor selected will be responsible for all aspects of this component, including obtaining raw cost and statistical data and identifying allocable costs. Proposals must include a description of the system to be used to extract allowable costs from central government agencies and for allocating such costs. A complete set of the work papers used to prepare the plan must be kept and provided to the Governor's Office upon request. The contractor is required to provide 20 copies of the summary of fixed costs related to federal cost allocations from the completed plan and 20 copies of the summary of costs related to the allocation of state central service agency costs to other state agencies from the completed full cost plan. The contractor must also provide the summaries of fixed costs for the federal and state plans in machine-readable form, preferably EXCEL, for posting on the Internet. The Governor's Office of Budget and Planning will evaluate each proposal and reserves the right to reject any and all proposals. The state assumes no responsibility for expenses incurred in preparing responses to this solicitation. If selected, the contractor will be chosen on the basis of proposal content, the proposer's demonstrated experience, competence, knowledge and qualifications, and ability to meet the federal filing deadline of February 28, 2001. A copy of the FY 2001 plan may be downloaded from the Internet at http://www.governor.state.tx.us/Grants/guidelines.html#Statewide Cost Allocation Plans or obtained by contacting Denise Francis, Governor's Office of Budget and Planning, P.O. Box 12428, Austin,

Texas 78711 (telephone (512) 305-9415, e-mail dfrancis@governor.state.tx.us). All proposals must be received at the above address no later than 5:00 p.m., December 29, 2000.

TRD-200008496
Kevin Van Oort
Assistant General Counsel
Office of the Governor
Filed: December 6, 2000

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Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

graphic

[graphic]

graphic

[graphic]

graphic

[graphic]

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Title 25 Texas Administrative Code (TAC) Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is a resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200008475
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 6, 2000

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Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Jesus I. Ochoa, D.D.S., Edinburg, R03442; Don W. Dawes, D.D.S., Inc., Corpus Christi, R05461; San Gabriel Clinic, Georgetown, R12402; John K. Echols, D.D.S., Port Arthur, R12467; M. T. Garcia, D.D.S., Houston, R16847; Medcomap, Richardson, R22166; Abilene Regional Medical Center, Cisco, R22725; C. Lynn Hurst, D.D.S., M.S., PC, San Antonio, R23429; Medical Purchasing Group, Dallas, R24161; San Antonio MFCA Limited Partnership, San Antonio, R24243; Circon Corporation, Santa Barbara, California, Z01329.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange

Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200008474
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 6, 2000

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Notice of Intent to Revoke the Radioactive Material License of Genetex, Inc.

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Genetex, Inc., San Antonio, L05255.

The complaint alleges that the licensee has failed to pay required annual fees. The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material license will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200008473
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 6, 2000

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Texas Health and Human Services Commission

Joint Public Hearing - Proposed Payment Rates for the Bienvivir Waiver Medicaid Program Operated by the Texas Department of Human Services and the Case Management for Children Who are Blind and Visually Impaired Medicaid Program Operated by the Texas Commission for the Blind

The Texas Health and Human Services Commission (HHSC), Texas Department of Human Services (DHS), and Texas Commission for the Blind (TCB) will conduct a joint public hearing to receive public comments on proposed payment rates for the following Medicaid programs and services: Bienvivir Waiver and TCB Case Management for Children who are Blind or Visually Impaired. The joint hearing will be held in compliance with Title 1 of the Texas Administrative Code, §355.105(g), which requires public hearings on proposed payment rates for medical assistance programs. The public hearing will be held on December 20, 2000, at 9:30 a.m. in Conference 450C of the West Tower of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas (Fourth Floor, West Tower). Written comments regarding payment rates set by the HHSC may be submitted in lieu of testimony until 5:00 pm the day of the hearing. Written comments may be sent by U.S. mail to the attention of Nancy Kimble, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030. Express mail can be sent to Ms. Kimble at DHS, MC W-425, 701 West 51st Street, Austin, Texas 78751-2312. Hand deliveries addressed to Ms. Kimble will be accepted by the receptionist in the lobby of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas. Alternatively, written comments may be sent via facsimile to Ms. Kimble at (512) 438- 2165. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Kimble, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4051.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Kimble, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4051, by December 18, 2000, so that appropriate arrangements can be made.

TRD-200008476
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: December 6, 2000

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Texas State Affordable Housing Corporation

Notice of Public Hearing

TEXAS STATE AFFORDABLE HOUSING CORPORATION MULTIFAMILY HOUSING REVENUE BONDS (AGAPE IRVING HOUSING, INC. DEVELOPMENT) SERIES 2001

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on January 8, 2001 at 12:00 noon at MacArthur Office Plaza, 3501 North MacArthur Boulevard, Irving Arts Center, Building 700, Classroom One, Irving, Texas, 75062, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in the aggregate amount not to exceed $24,000,000, the proceeds of which will be loaned to Agape Irving Housing, Inc., an Internal Revenue Code Section 501(c)(3) corporation, to finance the acquisition and rehabilitation of a multifamily housing project (the "Project") located within Dallas County, Texas, as described as follows: The Reserve Apartments containing 261 units, located at 4213 Las Brisas, Irving, Texas 75038. The Project will be owned by Agape Irving Housing, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or request for additional information may be direct to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Michael A. Sullivan, ADA Responsible Employee, at 1-888-638-3555, ext.417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda Houchin David at 1-888-638-3555, ext. 417, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel Owen at dowen@tsahc.com.

TRD-200008469
Michael A. Sullivan
President
Texas State Affordable Housing Corporation
Filed: December 5, 2000

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Texas Department of Insurance

Insurer Services

Application for admission to the State of Texas by BLUEPAW FAMILY PET INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Portland, Oregon.

Application to change the name of AMERICAN INDEMNITY LLOYDS to UNITED FIRE LLOYDS, a domestic lloyds company. The home office is in Galveston, Texas.

Application to change the name of AMERICAN FIRE AND INDEMNITY COMPANY to UNITED FIRE & INDEMNITY COMPANY, a domestic fire and casualty company. The home office is in Galveston, Texas.

Application to change the name of ELM COUNTY MUTUAL INSURANCE COMPANY to MERCURY COUNTY MUTUAL INSURANCE COMPANY, a domestic county mutual fire company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200008494
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by National Alliance Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting various percentages (-13.8% to +176.6%) by coverage, territory and classification.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by January 2, 2001.

TRD-200008483
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by American International Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all classes, various %'s by territory and coverage: Bodily Injury (+29% to +56%), Property Damage (+25% to +53%), Medical Payments (+26% to 57%), Personal Injury Protection (+30% to +58%), UMBI/UMPD (+30%), Comprehensive (+2% to +14%), and Collision (+47% to +62%).

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by January 2, 2001.

TRD-200008484
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by GEICO Indemnity Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all territories and classifications: +27.1% bodily injury; +54.7% property damage; +45.6% personal injury protection; +30% medical payments, uninsured motorists-BI, rental reimbursement & CB radio; +95% uninsured motorists-PD, +62.5% collision, +22.4% comprehensive; +25% emergency road service.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by January 2, 2001.

TRD-200008485

Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Northwestern Pacific Indemnity Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all classes and territories: +30% for only UM/UIM coverage and +40% for only Bodily Injury, Property Damage, Medical Payments, PIP, Comprehensive, and Collision coverages.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by January 2, 2001.

TRD-200008486
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Texas Pacific Indemnity Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all classes and territories: +30% for only UM/UIM coverage and +35% for only Bodily Injury, Property Damage, Medical Payments, PIP, Comprehensive, and Collision coverages.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by January 2, 2001.

TRD-200008487
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Great West Casualty Company proposing to use rates for commercial automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all classes and territories: +30% for BI, PD, Med Pay, PIP, UM, and UIM coverages and +43% for SP, Comprehensive and Collision coverages.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by December 28, 2000.

TRD-200008489
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by First National Insurance Company of America proposing to use rates for commercial automobile insurance (including private passenger types) that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting +15% liability and physical damage and +20% UM/UIM for commercial vehicle classes and all other classes and also requesting +25% to +55% by coverage for private passenger vehicle (type 3) classes on commercial automobile.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by January 2, 2001.

TRD-200008480
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by First National Insurance Company of America proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all classes and territories: +25% for Uninsured Motorist; +40%

for Property Damage; +45% for Bodily Injury, Personal Injury Protection, and Medical Payments; +50% for Comprehensive; and +55% for Collision coverages.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by January 2, 2001.

TRD-200008481
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Liberty Insurance Corporation proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all territories: +30% by class for only UIM coverage; +44% for only classes 6A, 6B, 6C, 6AF and +60% for all other classes under only Bodily Injury and Property Damage coverages; +59.8% for only classes 6A, 6B, 6C, 6AF and +77.6% for all other classes under only Medical Payments and PIP coverages; and +109% under only Comprehensive and Collision coverages.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by January 4, 2001.

TRD-200008482
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Adviant, LLC, a domestic third party administrator. The home office is Dallas, Texas.

Application for admission to Texas of Highmark Services company, a foreign third party administrator. The home office is Pittsburgh, Pennsylvania.

Application for admission to Texas of Medical Claims Services, Inc., a foreign third party administrator. The home office is Quincy, Massachusetts.

Application for admission to Texas of Employee health Systems Medical Group, Inc., (doing business under the assumed name of EHSMD, Inc.), a foreign third party administrator. The home office is El Monte, California.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200008488
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 6, 2000

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Texas Natural Resource Conservation Commission

Notice of Public Hearing - Aquilla Reservoir TMDL

Notice is hereby given that pursuant to the requirements of the Federal Clean Water Act, Texas Water Code, Chapter 26, and Part 25 of Title 40 of the Code of Federal Regulations, the Texas Natural Resource Conservation Commission (TNRCC or commission) and the Texas State Soil and Water Conservation Board (TSSWCB or State Board) have made available for public comment a draft Total Maximum Daily Load (TMDL) concerning atrazine in Aquilla Reservoir near Hillsboro, Texas, in Hill County. The TNRCC and TSSWCB will also conduct a non-adjudicatory public hearing to complete the public comment period. This announcement constitutes notice that a change to the State Water Quality Management Plan will occur upon approval of the TMDL by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies under the 1972 Federal Clean Water Act, §303(d). A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water to restore and maintain designated uses.

The TNRCC and TSSWCB will conduct a non-adjudicatory public hearing on the TMDL concerning atrazine in Aquilla Reservoir. The purpose of the public hearing is to provide the public an opportunity to comment on the proposed TMDL. The two state agencies request comment on each of the six major components of the TMDL: Problem Definition, Endpoint Identification, Source Analysis, Linkage Between Sources and Receiving Waters, Margin of Safety, and Loading Allocations. After the public comment period, the TNRCC and TSSWCB staff may revise the TMDL, if appropriate. The final TMDL will then be brought to the commission for approval. Upon approval, the final TMDL and a response to all comments will be made available on the TNRCC web site referenced below. The TMDL will then be submitted to the EPA Region 6 for approval, and will be certified in the next regularly scheduled update to the State of Texas Water Quality Management Plan.

A non-adjudicatory public hearing will be held in Hillsboro, on January 9, 2001, at 7:00 p.m., at the Texas Agricultural Extension Service Office located at the Hill County Courthouse Annex Building, 126 South Covington Street. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss

the matter 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments should be submitted to Joyce Spencer, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m., January 17, 2000, and should reference 2000-1342-TML. For further information regarding the proposed TMDL, please contact Frank Burleson, Office of Environmental Policy, Analysis, and Assessment, (512) 239-4507. Copies of the document summarizing the proposed TMDL can be obtained via the commission's Web Site at *http://www.tnrcc.state.tx.us/water/quality/tmdl*, or by calling Joyce Spencer at (512) 239-5017.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200008458
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: December 5, 2000

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Texas Department of Protective and Regulatory Services

Request for Proposal - Community Based Family Resource and Support Program - Parent Education and Support Services/Potter and Randall Counties

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting proposals for a contractor to provide Parent Education and Support Services for Potter and Randall Counties in Texas through Community Based Family Resource and Support funding. The Request for Proposal (RFP) will be released on or about December 15, 2000.

Brief Description of Services: Services solicited under this RFP encompass the following: outreach/recruitment of employers to collaborate in service provision; outreach/recruitment of parents to participate in parenting education and support services; provision of parenting education and support services to participants; registration of participants as per PRS requirements; maintenance of records of participating parents and employers; submission of records to PRS on a periodic basis; and program evaluation.

Eligible Applicants: Eligible offerors include private, nonprofit and for-profit corporations, cities, counties, state agencies/entities, partnerships, and individuals. Historically Underutilized Businesses (HUBs), Minority Business and Women's Enterprises, and Small Businesses are encouraged to submit proposals.

Limitations: Only one contract will be awarded under this RFP. Funding of the selected proposal will be dependent upon available federal and/or state appropriations. PRS reserves the right to fund no proposal, or to fund a successful proposal at a lesser dollar amount than the amounts indicated below. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS. PRS also reserves the right to re-procure this service.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due January 24, 2001, at 2:00 p.m. The effective dates of contracts awarded under this RFP will be March 1, 2001, through August 31, 2001, at a maximum amount of $25,000 for the period. If contracts are renewed for the following fiscal year, a maximum amount of $45,000 will be available. Please note funding limitations stated above.

Contact Person: Potential offerors may obtain a copy of the RFP on or about December 15, 2000. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Chris Roitsch, Mail Code E-541; c/o Jacqueline Gomez; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: (512) 438-2031.

TRD-200008477
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: December 6, 2000

♦ ♦ ♦

Public Utility Commission of Texas

Correction of Error

The Public Utility Commission of Texas proposed new 16 TAC §25.215, concerning Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that has implemented Customer Choice. The rule appeared in the September 29, 2000, *Texas Register* (25 TexReg 9795).

Due to a typographical error, the section number was filed and published as "§25.214" on page 9796. The correct section number, as published in the rule preamble is "§25.215."

TRD-200008498

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 28, 2000, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Sempra Energy Solutions for Retail Electric Provider (REP) certification, Docket Number 23332 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than December 22, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008341
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 1, 2000

♦ ♦ ♦

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on December 1, 2000, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of First Choice Power, Inc. for Retail Electric Provider (REP) certification, Docket Number 23350 before the Public Utility Commission of Texas.

Applicant's requested service area is the geographic area of the Electric Reliability Council of Texas (ERCOT).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than December 22, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008449
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2000

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On December 1, 2000, Focal Communications Corporation of Texas filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60232. Applicant intends to reflect a *pro forma* reorganization.

The Application: Application of Focal Communications Corporation of Texas for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23351.

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 Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than December 20, 2000. You may contact the commission's Customer Protection Division 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 23351.

TRD-200008450
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2000

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger and Transfer and to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for sale, transfer, or merger transfer, and to amend certificated service area boundaries on November 21, 2000, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.101, 37.051-37.056 (Vernon 1998 & Supplement 2000).

Docket Style and Number: Application Of Southwestern Electric Power Company To Amend Certificate Of Public Convenience And Necessity, To Acquire Distribution Facilities, And For Approval Of A Related Tariff. Docket Number 23307.

The Application: Southwestern Electric Power Company (SWEPCO) filed with the Public Utility Commission of Texas (commission) an application for (1) approval of the acquisition of the distribution system of the Red River Army Depot (RRAD), (2) an amendment to SWEPCO's service area boundary to include the RRAD military facility, and (3) approval of SWEPCO's proposed tariff to recover the cost of distribution service within the RRAD once SWEPCO has acquired the RRAD distribution system.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200008334
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2000

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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 (commission) of an application on November 29, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of E.Com Technologies, LLC for a Service Provider Certificate of Operating Authority, Docket Number 23330 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, custom calling and selected CLASS services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than December 20, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008342
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 1, 2000

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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 December 4, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to

§§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Central Texas Technologies, L.P. for a Service Provider Certificate of Operating Authority, Docket Number 23358 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, Optical Services, T1- Private Line, Switched 56 KBPS, Frame Relay, Fractional T1, long distance, wireless services, access services, and broadband options.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than December 20, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008457
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2000

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 21, 2000, to amend a certificated service area boundary in Jasper County pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated. (Vernon 1998 & Supplement 2000) (PURA). A summary of the application follows.

Docket Style and Number: Joint Application Of Jasper-Newton Electric Cooperative, Inc. And Entergy Gulf States, Inc. To Amend Certified Service Area Boundaries Within Jasper County. Docket Number 23306.

The Application: Jasper-Newton Electric Cooperative, Inc. (JNEC) and Entergy Gulf States, Inc. (EGSI) filed a joint application to amend a certificated service area boundary in Jasper County. This service area exception is requested to allow JNEC to become the electric service provider for customers presently served by EGSI in Weiss Bluff, Texas. JNEC has received connection requests from several customers who desire to change service from EGSI to JNEC. The affected customers are more accessible to JNEC's facilities.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200008333
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2000

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 22, 2000, to amend a certificated service area boundary in Tom Green, Schleicher and Menard Counties pursuant to §§52.002, 54.001, 54.052-54.054 of the Public Utility Regulatory Act, Texas Utilities Code Annotated. (Vernon 1998 & Supplement 2000) (PURA). A summary of the application follows.

Docket Style and Number: Application Of Verizon Southwest To Amend Certificate Of Convenience And Necessity With Tom Green, Schleicher And Menard Counties. Docket Number 23315.

The Application: Verizon Southwest (Verizon) filed an application to amend its certificated service area boundaries in Tom Green, Schleicher and Menard Counties. Verizon seeks to revise its Eldorado, San Angelo, and Menard exchange area boundaries to accurately reflect the way the area is presently being served. Verizon represents that the boundary change will be transparent to customers within the affected areas, with no change in calling scope or rates.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200008335
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2000

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 28, 2000, to amend a certificated service area boundary in Hidalgo County pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated. (Vernon 1998 & Supplement 2000) (PURA). A summary of the application follows.

Docket Style and Number: Application Of Central Power And Light Company To Amend Certificated Service Area Boundaries In Hidalgo County. Docket Number 23323.

The Application: Central Power and Light Company (CPL) filed an application to amend its certificated service area boundary in Hidalgo County. CPL seeks (1) to amend its certificate of convenience and necessity (CCN) to exclude areas within the Sharyland Plantation from CPL service area and (2) a service area exception to allow CPL to continue providing service to its current customers and locations within the Sharyland Plantation that do not elect to switch service to Sharyland Utilties, L.P.. Sharyland Utilities, L.P. does not oppose the application.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division

at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200008336
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2000

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on November 21, 2000, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Cone Exchange for Expanded Local Calling Service, Project Number 23308.

The petitioners in the Cone exchange request ELCS to the exchanges of Crosbyton, Floydada, Lorenzo, Lubbock, and Petersburg.

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 Customer Protection Division at (512) 936-7120 no later than January 17, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008462
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2000

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Notice of Petition for Rulemaking to Amend §26.130 Related to Selection of Telecommunications Utilities

The Public Utility Commission of Texas (commission) received a petition for rulemaking from the Texas Statewide Telephone Cooperative, Incorporated (TSTCI). The petition was filed on December 1, 2000 and assigned Project Number 23375, *Petition of Texas Statewide Telephone Cooperative, Inc. to Amend Substantive Rule §26.130(f) regarding Inconsistencies Between Federal and State Rules*. Under the Administrative Procedure Act, Texas Government Code §2001.021, the commission shall either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding not later than the 60th day after the date the petition is filed.

TSTCI states that the Federal Communications Commission's (FCC) rules, §64.1160 and §64.1170, became effective November 28, 2000. TSTCI also advises that the Public Utility Regulatory Act (PURA) §55.308 requires that rules adopted by the commission pursuant to PURA, Chapter 55, Subchapter K, Selection of Telecommunications Utilities, be consistent with applicable federal laws and rules. TSTCI comments that the federal rules and commission substantive rule §26.130 relating to Selection of Telecommunications Utilities differ in two respects: (1) under federal rules, the authorized carrier has the responsibility to reimburse customers while under the commission's rule the unauthorized carrier has the responsibility to reimburse customers; and (2) the federal and state rules calculate reimbursement differently. TSTCI states that the current two-tiered approach unnecessarily complicates the reimbursement process for both carriers and customers.

Comments on the petition may be filed not later than 3:00 p.m. on Friday, January 5, 2001. Copies of the petition may be obtained from the commission's Central Records Division, William B. Travis Building, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 23375.

TRD-200008478
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 6, 2000

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Public Notice of Interconnection Agreement

On November 28, 2000, Southwestern Bell Telephone Company and Texas RSA 15B2 Limited Partnership, A Texas Limited Partnership doing business as Five Star Wireless, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23327. 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 ten 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 23327. 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 December 29, 2000, 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 commission's Customer Protection Division 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 23327.

TRD-200008447
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2000

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Public Notice of Interconnection Agreement

On November 29, 2000, Southwestern Bell Telephone Company and Paging Professionals of Oklahoma, Inc. doing business as ProTel Communications, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23329. 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 ten 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 23329. 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 December 29, 2000, 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 commission's Customer Protection Division 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 23329.

TRD-200008448
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2000

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Public Notice of Workshop on Rulemaking to Amend §26.102 and §26.107 and Related Forms Regarding Pay Telephone Service Providers

The Public Utility Commission of Texas (commission) will hold a workshop regarding a rulemaking to amend §26.102 relating to Registration of Pay Telephone Service Providers and §26.107 relating to Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers and associated forms on Tuesday, January 9, 2000 at 9:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 23236 *Rulemaking to amend §26.102 Registration of Pay Telephone Service Provider and §26.107 Registration of Nondominant Telecommunications Carriers and Related Forms for Pay Telephone Service Providers* has been established for this proceeding. This rulemaking is in response to a petition of the Texas Payphone Association that asserts the commission requirements for registration under §26.102 and §26.107 are duplicative and burdensome for pay telephone service providers. This rulemaking is established to determine whether §26.102 or §26.107 should govern pay telephone service providers and whether any modifications should be made to either of those rules or the related forms.

Commission staff has drafted a new registration form for pay telephone service providers to better capture data that will aid the commission in understanding this segment of the telecommunications market in Texas. Staff has also drafted proposed amendments to §26.102 and §26.107 to facilitate discussions at the workshop. These drafts will be made available in Central Records and on the commission's Project Number 23236 web page no later than December 15, 2000.

Questions concerning the workshop or this notice should be referred to Betsy Tyson, Telecommunications Division, (512) 936-7323. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200008455
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2000

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Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities, And Rate of Return on Assets and Report of Balance Sheet, Actuarial Valuation, and Unfunded Liabilities

§825.108, Government Code requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15th of each year containing the following information: (1) the retirement system's fiscal transactions for the preceding fiscal year; (2) the amount of the system's accumulated cash and securities; and (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108, Government Code requires TRS to publish a report in the *Texas Register* no later than March 1 of each year containing the balance sheet of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following reports as required by statute.

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TRD-200008500

Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: December 6, 2000

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The Texas A&M University, Board of Regents

Notice of Sale of Oil, Gas, and Sulphur Lease

The Board of Regents of The Texas A&M University System, pursuant to provisions of V.T.C.A., Education Code, Chapter 85, as amended, and subject to all rules and regulations promulgated by the Board of Regents, offers for sale at public auction in Room 524, System Real Estate Office, The Texas A&M University System, John B. Connally Building, 301 Tarrow Drive, College Station, Texas, at 10:00 a.m., Tuesday, January 9, 2001, an oil, gas and sulphur lease on the following described land in Brazos County, Texas. The property offered for lease contains 580.13 mineral acres, more or less, of land and more particularly described as follows:

Being 580.13 acres, more or less, out of the Stephen Jones Survey, Abstract No. 27, and the John H. Jones Survey, Abstract No. 26, Brazos County, Texas. The tract offered is the Texas A&M Animal Science Teaching, Research and Extension Complex (ASTREC).

The minimum lease terms, which applies to this tract, are as follows:

(1) Bonus: $200 per net mineral acre

(2) Royalty: 25%

(3) Delay Rental: $10.00 per net mineral acre.

(4) Primary term: Three (3) years

(5) Commitment to Drill: Within first year

(6) Continuous Drilling Commitment: 120 days

(7) Net Mineral Acres: 580.13 (More or Less)

Highest bidder shall pay to the Board of Regents on the day of the sale 25% of the bonus bid, and the balance of the bid shall be paid to the Board within twenty-four (24) hours after notification that the bid has been accepted. All payments shall be in cashier's check as the Board may direct. Failure to pay the balance of the amount bid will result in forfeiture to the Board of the 25% paid. The Board of Regents of The Texas A&M University System, RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS. The successful bidder will be required to pay all advertising expenses and administrative costs.

Further inquiries concerning oil, gas and sulphur leases on System land should be directed to: Dan K. Buchly, Assistant Vice Chancellor and Director of Real Estate, System Real Estate Office, The Texas A&M University System, John B. Connally Building, Suite 519, 301 Tarrow Drive, College Station, Texas 77840-7896, (979) 458-6350.

TRD-200008499
Vickie Burt Spillers
Executive Secretary to the Board
The Texas A&M University, Board of Regents
Filed: December 6, 2000

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Request for Proposals

In accordance with the Texas Insurance Code, Article 3.50-3, as amended, The Texas A&M University System (the System) announces a Request for Proposals (RFP) to provide administrative services for its self-insured group employee health plan, group employee prescription drug program and group employee dental plan. Firms are invited to submit proposals for any or all of the plans mentioned above. The RFP solicits proposals for plans beginning September 1, 2001.

Firms wishing to respond to this request must have superior, recognized expertise and specialize in administering benefit plans of the types listed above.

The deadline for receipt of proposals in response to this request is January 18, 2001.

The System reserves the right to accept or reject any proposals submitted, and is under no legal requirement to execute a resulting contract on the basis of this advertisement. The System will base its choice on cost, demonstrated competence, superior qualifications, and evidence of conformance with the RFP criteria. The System shall not designate and will not pay commissions to an Agent of Record or a commissioned representative.

This RFP does not commit the System to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the System to award a contract or to pay any cost incurred in the preparation of a response. The System specifically reserves the right to vary all provisions set forth at any time prior to execution of the contract where the System deems it to be in its best interest.

Beginning December 15, 2000, RFP instructions providing detailed information regarding the project can be downloaded from http://sago.tamu.edu/shro/rfp.htm or written requests can be faxed to Mr. Steven W. Hassel, Director, Benefit Programs, System Human Resources, The Texas A&M University System, FAX (979) 845-5281 (physical address: John B. Connally Building, 301 Tarrow Drive, 5th Floor, College Station, Texas 77840-7896). For questions or further information regarding this notice contact Mr. Steven W. Hassel by facsimile or by email at hassel@sagomail.tamu.edu .

TRD-200008472
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: December 6, 2000

♦ ♦ ♦

Texas Department of Transportation

Notice of Request for Proposal

The Texas Department of Transportation (TxDOT) announces a Request for Proposal (RFP) from project initiation to March 01, 2002. The project will be funded at 80% through Federal Transit Administration §5313 program funding, and will be administered by the Planning and Support Section of the Public Transportation Division (Division) of TxDOT. The RFP will be released on December 15, 2000.

Purpose: The purpose of the funding is to conduct a management performance audit and develop a transportation development plan for the ten transit systems and their subcontractors. This project will involve a detailed examination of the environments in which the transit systems operate. The audit will assess the performance of each operational unit, as well as the effectiveness and efficiency of the system as a whole. The audit will also assess the decision-making process used by local officials to oversee performance and the organizational structure of the system.

Eligible Applicants: Eligible applicants include, but are not limited to organizations that provide professional consulting services to public transit industry.

Availability of Funds: A maximum of $350,000 will be available to fund the Management Performance audits and Transportation Development Plans outlined in this RFP.

Program Goal: Section 31.36 of Title 43, Texas Administrative Code (TAC) requires FTA §5311 grant recipients to develop performance goals for each fiscal year. The intent is to ensure that Texas' Rural Transit Districts (RTD) are being operated in the most efficient and cost-effective manner possible. This specific project is being initiated to conduct a management performance audit and transportation development plan of those RTDs that currently make up the bottom quartile for performance.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the Division and the transit industry will score proposals. The proposals will be evaluated using the criteria and review process described in the RFP.

Deadlines: Proposals prepared according to instructions in the RFP Package must be received by TxDOT by 4:00 p.m., Central Standard Time, on or before January 18, 2001.

To Obtain a Copy of the RFP: Request for a copy of the RFP should be submitted to Karen Dunlap, Texas Department of Transportation, Public Transportation Division, 125 East 11th Street, Austin, TX 78701-2483, Telephone (512) 416-2817, Fax (512) 416-2830, E-mail **kdunlap@dot.state.tx.us**

TRD-200008343
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 1, 2000

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code*** (***TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 8, April 9, July 9, and October 8, 1999). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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